Speech of Mr. BAYARD,

On the bill received from the Senate, entitled "An Act to repeal certain acts respecting the organization of the courts of the U. States."

Delivered in the House of Representatives, Feb. 19, 1802.

Mr. CHAIRMAN. I must be allowed to express my surprize at the course pursued by the honorable gentleman from Virginia (Mr. Giles) in the remarks which he has made on the subject before us. I had expected it as well from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he held on the floor of this house, as from the professions of a desire to conciliate, which he has so repeatedly made during the session.—We have been invited to bury the hatchet, and brighten the chain of peace. We were disposed to meet on middle ground.—We had assurances from the gentleman, that he would abstain from reflections on the past, and that his only wish was that we might unite in future in promoting the welfare of our common country. We confided in the gentleman's sincerity, and cherished the hope, that if the divisions of party were not banished from the house, its spirit would be rendered less intemperate. Such were our impressions, when the mask was suddenly thrown aside, and we saw the torch of discord lighted and blazing before our eyes. Every effort has been made to revive the animosities of the house, and to inflame the passions of the nation. I am at no loss to perceive why this course has been pursued. The gentleman has been unwilling to rely upon the strength of his subject, and has therefore determined to make the measure a party question. He has probably insured success, but would it not have been honorable and more commendable to have left the decision of a great constitutional question to the understanding and not the prejudices of the house. It was my ardent wish to discuss the subject with calmness and deliberation, and I did intend to avoid every topic which could awaken the sensibility of party. This was my temper and design when I took my seat yesterday. It is a course at present we are no longer at liberty to pursue. The gentleman has wandered far, very far from the point of the debate, and has extended his animadversions to all the prominent measures of the former administrations. In following him through his preliminary observations, I necessarily lost sight of the bill upon your table.

The gentleman commenced his strictures with the philosophic observation, that it was the fate of mankind to hold different opinions as to the form of government which was preferable. That some were attached

to the monarchcial, while others thought the republican form the more eligible. This, as an abſtract remark, is certainly true, and could have not furnished ground of offence, if it had not evidently appeared that an allusion was designed to be made to the parties in this country. Does the gent eman suppose that we have a less lively recollection than himself of the oath which we have taken to support the conſtitution; that we are less sensible of the spirit of our government, or less devoted to the wishes of our conſtituents? Whatever impression it might be the intention of the gentleman to make, he does not believe that there exiſts in the country an anti-republican party. He will not venture to aſſert such an opinion on the floor of this house. That there may be a few individuals having a preference for monarchy is not improbab'e; but will the gentleman from Virginia, or any other gentleman affirm in this place, that there is a party in the country who wish to eſtablish monarchy? Insinuations of this sort belong not the legislature of the union. Their p'ace is an election ground or an ale-house. Within these walls they are loſt; abroad, they have had an effect, and I fear are ſtill capable of abusing popular credulity.

We were next told of the parties which have existed, divided by the opposite views of promoting executive power, and guarding the rights of the people. The gentleman did not tell us in plain language, but he wished it to be understood, that he and his friends were the guardians of the peoples' rights, and that we were the advocates of the executive power.

I know that this is the diſtinction of party which some gentlemen have been anxious to eſtablish; but it is not the ground on which we divide. I am satisfied with the conſtitutional powers of the executive, and never wished or attempted to encrease them; and I do not believe that the gentlemen on the other side of the house ever had a serious apprehension of danger from an increase of executive authority. No, sir, our views as to the powers which do and ought to belong to the general and ſtate governments, are the true source of our divisions. I co-operated with the party to which I am attached, because I believed that their true object and end is an honeſt and efficient support of the general government, and the exercise of the legitimate powers of the conſtitution.

I pray God I may be miſtaken in the opinion I entertain as to the designs of the gentlemen to whom I am opposed. Those designs I believe hoſtile to the powers of this government. State pride extinguishes a national sentiment. Whatever power is taken from this government is given to the ſtates.

The ruins of this government aggrandize the ſtates. There are ſtates which are too proud to be controlled. Whose sense of greatness and resource renders them indifferent to our protection, and induces a belief, that if no general government exiſted, their influence would be more extensive and their importance more conspicuous. There are gentlemen who make no secret of an extreme point of depression, to which the government is to be sunk. To that point we are rapidly progressing. But I would beg gentlemen to remember, that human affairs are not to be arreſted in their course, at artificial points. The impulse now given may

be accelerated by causes at present out of view. And when those who now design well, wish to ſtop, they may find their powers unable to reſiſt the torrent. It is not true that we ever wished to give a dangerous ſtrength to executive power. While the government was in our hands it was our duty to maintain its conſtitutional balance, by preserving the energies of each branch. There never was an attempt to vary the relation of its powers. The ſtruggle was to maintain the conſtitutional powers of the executive. The wild principles of French liberty were scattered through the country. We had our jacobins and disorganizers. They saw no difference between a king and a president, and as the people of France had put down their king they thought the people of America ought to put down their president. They who consider the conſtitution as securing all the principles of rational and practical liberty, who were unwilling to embark upon the tempeſtuous sea of revolution, in pursuit of visionary schemes, were denounced as monarchiſts. A line was drawn between the government and the people, and the friends of the government were marked as the enemies of the people. I hope however, that the government and the people are now the same: and I pray to God that what has been frequently remarked, may not in this case be discovered to be true, that they who have the name of the people the moſt often in their mouths, have their true interests the most seldom at their hearts

The honourable gentleman from Virginia wandered to the very confines of the federal adminiſtration, in search of materials the moſt inflammable and moſt capable of kindling the angry passions of his party.

He represents the government as seizing the firſt moment which presented itself to create a dependent monied interest, ever devoted to its views. What are we to underſtand by this remark of the gentleman? Does he mean to say that Congress did wrong in funding the public debt? Does he mean to say that the price of our liberty and independence ought not to have been paid? Is he bold enough to denounce this measure as one of the federal victims marked for destruction? Is it the design to tell us that its day is not yet come, but is approaching; and that the funding syſtem is to add to the pile of federal ruins? Do I hear the gentleman say we will reduce the army to a shadow, we will give the navy to the worms, the mint which presented the people with the emblems of their liberty and their sovereignty, we will aboliſh—the revenue shall depend upon the wind and the waves, the judges shall be made our creatures, and the great work shall be crowned and consecrated by relieving the country from an odious and oppressive public debt. These steps I presume are to be taken in progression.

The gentleman will pause at each and feel the public pulse. As the fever encreases he will proceed, and the moment of delirium will be seized to finish the great work of destruction.

The assumption of the state debts has been made an article of distinct crimination. It has been ascribed to the worſt motives; to a design of increasing a dependent monied interest. Is it not well known, that those debts were part of the price of the revolution? That they rose in the exigency of our affairs, from the efforts of the particular states, at times

when the federal arm cou'd not be extended to their relief? Each state was entitled to the protection of the union, the defence was a common burthen and every state had a right to expect that the expences attending its individual exertions in the general cause, would be reimbursed from the public purse. I shall be permitted further to add that the United States, having absorbed the sources of state revenue, except direct taxation, which was required for the support of the state governments, the assumption of these debts were necessary to save some of the states from bankruptcy.

The internal taxes are made one of the crimes of the federal administration. They were imposed, says the gentleman, to create an host of dependents on executive favour. This supposes the past administrations to have been not only very wicked, but very weak. They lay taxes in order to strengthen their influence. Who is so ignorant as not know that the imposition of a tax would create an hundred enemies for one friend? The name of excise was odious; the details of collection were unavoidably offensive, and it was to operate upon a part of the community least disposed to support public burthens, and most ready to complain of their weight. A little experience will give the gentleman a new idea of the patronage of this government. He will find it not that dangerous weapon in the hands of the administration which he has heretofore supposed it, he will probably discover that the poison is accompanied by its antidote. And that an appointment of the government, while it gives to the administration one lazy friend, will raise up against it ten active enemies.

No! The motive ascribed for the imposition of the internal taxes is as unfounded, as it is uncharitable. The federal administration in creating burthens to support the credit of the nation, and to supply the means of its protection, knew that they risked the favour of those upon whom their favor depended. They were willing to be the victims when the public good required.

The duties on imports and tonage furnished a precarious revenue; a revenue at all times exposed to deficiency from causes beyond our reach. The internal taxes offered a fund less liable to be impaired by accident; a fund which did not rob the mouth of labour, but was derived from the gratification of luxury. These taxes are an equitable distribution of the public burthens. Through this medium the western country is enabled to contribute something to the expences of a government which has expended and daily expends such large sums in its defence. When these taxes were laid they were indispensable. With the aid of them it has been difficult to prevent an encrease of the public debt. And notwithstanding the fairy prospects which now dazzle our eyes, I undertake to say, if you abolish them this session, you will be obliged to restore them or supply their place by a direct tax before the end of two years. Will the gentleman say, that the direct tax was laid in order to enlarge the bounds of patronage. Will he deny that this was a measure to which we had been urged for years by our adversaries, because they foresaw in it the ruin of the federal power. My word for it, no administration will ever be strengthened by patronage united with taxes which the people are sensible of paying.

We were next told, that to get an army an Indian war was necessary. The remark was extremely bold, as the honorable gentleman did not alledge a single reason for the position. He did not undertake to state, that it was a wanton war, or provoked by the government. He did not even venture to deny, that it was a war of defence, and entered into in order to protect our brethren on the frontiers from the bloody scalping knife, and murderous tom-a-hawk of the savage. What ought the government to have done? Ought they to have estimated the value of the blood which probably would be shed, and the amount of the devastation likely to be committed before they determined on resistance? They raised an army and after great expence and various fortune they have secured the peace and safety of the frontiers. But, why was the army mentioned on this occasion, unless to forewarn us of the fate which awaits them, and to tell us, that their days are numbered? I cannot suppose, that the gentleman mentioned this little army distributed on a line of three thousand miles, for the purpose of giving alarm to three hundred thousand free and brave yeomanry ever ready to defend the liberties of the country.

The honorable gentleman proceeded to inform the committee, that the goverment availing itself of the depredation of the Algerines, created a navy. Did the gentleman mean to insinuate that this war was invited by the United States? Has he any documents or proof to render the suspicion colorable? No, sir, he has none. He well knows that the Algerine aggressions were extremely embarrassing to the government. When they commenced, we had no marine force to oppose them. We had no harbors or places of shelter in the Mediterranean. A war with these pirates could be attended with neither honor nor profit. It might cost a great deal of blood, and in the end it might be feared that a contest so far from home, subject to numberless hazards and difficulties, could not be maintained. What would gentlemen have had the government to do? I know there are those who are ready to answer—abandon the Mediterranean trade. But would this have done? The corsairs threatened to pass the Streights, and were expected in the Atlantic. Nay, sir, it was thought that our very coasts would not have been secure.

Will gentlemen go farther and say, that the United States ought to relinquish their commerce. I believe this opinion has high authority to support it. It has been said, that we ought to be only cultivators of the earth, and make the nations of Europe our carriers.

This is not an occasion to examine the solidity of this opinion; but I will only ask, admitting the administration were disposed to turn the pursuits of the people of this country from the ocean to the land, whether there is a power in the government, or whether there would be if we were as strong as the government of Turky, or even of France, to accomplish the object? With a sea coast of 1700 miles, with innumerable harbors and inlets, with a people enterprizing beyond example, is it possible to say, you will have no ships or sailors, nor merchants. The people of this country will never consent to give up their navigation, and every administration will find themselves constrained to provide means to protect their commerce.

In respect to the Algerines the late administrations were singularly unfortunate. They were obliged to fight or pay them. The true policy was to hold a purse in one hand and a sword in the other. This was the policy of the government. Every commercial nation in Europe was tributary to these petty barbarians. It was not esteemed disgraceful. It was an affair of calculation, and the administration made the best bargain in their power. They have heretofore been scandalized for paying tribute to a pirate, and now they are criminated, for preparing a few frigates, to protect our citizens from slavery and chains. Sir, I believe on this and many other occasions if the finger of heaven had pointed out a course and the government had pursued it, yet, that they would not have escaped the censure and reproaches of their enemies.

We were told, that the disturbances in Europe were made a pretext for augmenting the army and navy. I will not, Mr. Chairman, at present go into a detailed view of the events which compelled the government to put on the armor of defence, and to resist by force the French aggrestions. All the world know the efforts which were made to accomplish an amicable adjustment of differences with that power. It is enough to state, that ambassadors of peace were twice repelled from the shores of France with ignominy and contempt. It is enough to say, that it was not till after we had drunk the cup of humiliation to the dregs, that the national spirit was roused to a manly resolution, to depend only on their God and their own courage for their protection. What, sir, did it grieve the gentleman, that we did not crouch under the rod of the Mighty Nation, and like the petty powers of Europe, tame y surrender our independence? Would he have had the people of the United States, relinquish without a struggle, those liberties which had cost so much blood and treasure? We had not, sir, recourse to arms till the mouths of our rivers were choaked with French corsairs. 'Till our shores, and every harbor, were insulted and violated. 'Till half our commercial capital, had been seized and no safety existed for the remainder but the protection of force. At this moment a noble enthusiasm electerized the country—the national pulse beat high, and we were prepared to submit to every sacrifice, determined only, that our independence should be the last. At that time an American was a proud name in Europe; but I fear, much I fear, that in the course we are now likely to pursue, the time will soon arrive, when our citizens abroad will be ashamed to acknowledge their country.

The measures of '98 grew out of the public feelings. They were loudly demanded by the public voice. It was the people who drove the government to arms, and not as the gentleman expressed it, the government which pushed the people to the X. Y. Z. of their political designs before they understoood the A. B. C. of their political principles.

But what sir, did the gentleman mean by his X. Y. Z. I must look for something very significant, something more than a quaintness of expression, or a play upon words in what falls from a gentleman, of his learning and ability. Did he mean that the dispatches which contained those letters were impostures designed to deceive and mislead the people of America. Intended to rouse a false spirit not justified by events. Tho'

the gentleman had no respect for some of the characters of that embassy; though he felt no respect for the chief justice or the gentleman appointed from South Carolina, two characters as pure, as honorable and exalted, as any country can boast of, yet I should have expected that he would have felt some tenderness for Mr. Gerry, in whom his party had since given proofs of undiminished confidence. Does the gentleman believe that Mr. Gerry would have joined in the deception, and assisted in fabricating a tale which was to blind his countrymen and enable the government to destroy their liberties? Sir, I will not avail myself of the equivocations or confession of Tallyrand himself, I say these gentlemen will not dare publicly to deny what is attested by the hand and seal of Mr. Gerry.

The truth of these dispatches admitted, what was your government to do? Give us, say the directory 1,200,000 livres for our own purse, and purchase fifteen millions of dollars of Dutch debt, (which was worth nothing) and we will receive your ministers and negociate for peace.

It was only left to the government to chuse between an unconditional surrender of the honor and independence of the country, or a manly resistance. Can you blame, sir, the administration for a line of conduct, which has reflected on the nation so much honor, and to which under God, it owes its present prosperity.

These are the events of the general government which the gentleman has reviewed in succession, and endeavored to render odious or suspicious.—For all this I could have forgiven him, but there is one thing for which I will not, I cannot forgive him. I mean his attempt to distrub the ashes of the dead—to disturb the ashes of the great and good Washington. Sir, I might degrade by attempting to eulogize this illustrious character. The work is infinitely beyond my powers. I will only say that as long as exalted talents and virtues confer honor among men, the name of Washington will be held in veneration.

After, Mr. Chairman, the honorable member had exhausted one quiver of arrows against the late executive, he opened another equally poisoned against the judiciary. He has told us, sir, that when the power of the government was rapidly passing from federal hands, after we had heard the thundering voice of the people which dismissed us from their service, we erected a judiciary, which we expected would afford us the shelter of an inviolable sanctuary. The gentleman is deceived. We knew better sir, the characters who were to succeed us, and we knew that nothing was sacred in the eyes of infidels. No, sir, I never had a thought that any thing belonging to the federal govevnment was holy in the eyes of those gentlemen. I could never therefore imagine that a sanctuary could be built up which would not be violated. I believe these gentlemen regard public opinion because their power depends upon it, but I believe they respect no existing establishment of the government, and if public opinion could be brought to support them, I have no doubt they woul dannihilate the whole. I shall at present only say farther on this head, that we thought the re-organization of the judicial system an useful measure, and we considered it as a duty to employ the remnant of our power to the best advantage of the country.

The honorable gentleman expressed his joy that the constitution had at last become sacred in our eyes—that we formerly held that it meant any thing or nothing. I believe, sir, that the constitution formerly appeared different in our eyes from what it now appears in the eyes of the dominant party. We formerly saw in it the principles of a fair and goodly creation? We looked upon it as a source of peace, of safety, of honor and of prosperity to the country. But now the view is changed; it is the instrument of wild and dark destruction it is a weapon which is to prostrate every establishment, to which the nation owes the unexampled blessings which it enjoys.

The present state of the country is an unanswerable commentary upon our construction of the constitution. It is true that we made it mean much and I hope, sir, we shall not be taught by the present administration that it mean even worse than nothing.

This gentleman has not confined his animadversions to the individual establishment, but has gone so far as to make the judge, the subject of personal invective. They have been charged with having transgressed the bounds of judicial duty, and become the apostles of a political sect. We have heard of their travelling about the country for little other purpose than to preach the federal doctrine to the people.

Sir, I think a judge should never be a partizan. No man would be more ready to condemn a judge who carried his political prejudices or antipathies on the bench. But I have still to learn that such a charge can be sustained against the judges of the United States.

The constitution is the supreme law of the land, and they have taken pains in their charges to grand juries to unfold and explain its principles. Upon similar occasions, they have enumerated the laws, which compose our criminal code, and when some of those laws have been denounced by the enemies of the administration as unconstitutional, the judges may have felt themselves called upon to express their judgments upon that point and the reasons of their opinions.

So far, but no farther, I believe the judges have gone; and in going thus far they have done nothing more than faithfully discharged their duty. But if, sir, they have offended against the constitution or laws of the country, why are they not impeached? The gentleman now holds the sword of justice, the judges are not a privileged order, they have no shelter but their innocence.

But in any view are the sins of the former judges to be fastened upon the new judicial system? Would you annihilate a system, because some men under part of it had acted wrong. The constitution has pointed out a mode of punishing and removing the men, and does not leave this miserable pretext for the wanton exercise of powers which is now contemplated.

The honourable member has thought himself justified in making a charge of a serious and frightful nature against the judges. They have been represented as going about searching out victims of the sedition law. But no fact has been stated—no proof has been adduced, and the gentlemen must excuse me for refusing my belief to the charge till it is sustained by stronger and better ground than assertion.

If, however, Mr. Chairman, the eyes of the gentleman are delighted with victims, if objects of misery are grateful to his feelings, let me turn his view from the walks of the judges to the tract of the present executive. It is in this path we see the real victims of stern, uncharitable, unrelenting power. It is here, sir, we see the soldier who fought the battles of the revolution; who spilt his blood and wasted his strength to establish the independence of his country, deprived of the reward of his services and left to pine in penury and wretchedness. It is along this path, that you may see helpless children crying for bread, and gray hairs sinking in sorrow to the grave! It is here that no innocence, no merit, no worth, no services can save the unhappy sectary who does not believe in the creed of those in power. I have been forced upon this subject, and before I leave it, allow me to remark that without enquiring into the right of the President to make vacancies in office, during the recess of the Senate, but admitting the power to exist, yet that it never was given by the constitution to enable the chief magistrate to punish the insults, to revenge the wrongs or to indulge the antipathies of the man. If the discretion exists, I have no hesitation in saying that it is abused when exercised from any other motive than the public good. And when I see the will of a president precipitating from office, men of probity, knowledge and talents, against whom the community has no complaint, I consider it as a wanton and dangerous abuse of power. And when I see men who have been the victims of this abuse of power, I view them as the proper objects of national sympathy and commiseration.

Among the causes of impeachment against the judges, is their attempt to force the sovereignties of the states to bow before them. We have heard them called an ambitious body politic; and the fact I allude to, has been considered as full proof of the inordinate ambition of the body.

Allow me to say, sir the gentleman knows too much not to know that the judges are not a body politic. He supposed perhaps there was an odium attached to the appellation, which it might serve his purposes to connect with the judges.—But sir, how do you derive any evidence of the ambition of the judges from their decision that the states under our federal compact were compellable to do justice? Can it be shewn or even said, that the judgment of the court was a false construction of the constitution? The policy of later times on this point has altered the constitution, and in my opinion has obliterated its fairest feature. I am taught by my principles that no power ought to be superior to justice. It is not that I wish to see the states humble in dust and ashes; it is not that I wish to see the pride of any man flattered by their degradation; but it is that I wish to see the great and the small, the sovereign and the subject bow at the altar of justice, and submit to those obligations from which the deity himself is not exempt. What was the effect of this provision in the constitution? It prevented the states being the judges in their own cause, and deprived them of the power of denying justice. Is there a principle of ethics more clear than that a man

ought not to be a judge in his own cause, and is not the principle equally strong when applied not to one man, but to a collective body. It was the happiness of our situation which enabled us to force the greatest ſtate to submit to the yoke of juſtice, and it would have been the glory of the country in the remoteſt times, if the principle in the conſtitution had been maintained. What had the states to dread? Could they fear injuſtice when oppoſed to a feeble individual? Has a great man reaſon to fear oppreſſion from a poor one? And could a potent state be alarmed by the unfounded claim of a ſingle perſon? For my part I have always thought that an independent tribunal ought to be provided to judge on the claims againſt this government.—The power ought not to be in our own hands—We are not impartial, and are therefore liable without our knowledge to do wrong. I never could see why the whole community ſhould not be bound by as ſtrong an obligation to do juſtice to an individual, as one man is bound to do it to another.

In England the ſubject has a better chance for juſtice againſt the ſovereign than in this country a citizen has againſt a ſtate. The crown is never its own arbiter, and they who ſit in judgment have no intereſt in the event of their deciſion.

The judges, ſir, have been criminated for their conduct in relation to to the ſedition act, and have been charged with ſearching for victims who were sacrificed under it. The charge is easily made, but has the gentleman the means of ſupporting it? It was the evident deſign of the gentleman to attach the odium of the ſedition law to the judiciary; on this ſcore the judges are surely innocent. They did not paſs the act; the legiſlature made the law, and they were obliged by their oaths to execute it. The judges decided the law to be conſtitutional; and I am not now going to agitate the queſtion. I did hope when the law paſſed, that its effect wou'd be uſeful. It did not touch the freedom of ſpeech, and was deſigned only to reſtrain the enormous abuſes of the preſs. It went no farther than to puniſh malicious falſhoods published with the wicked intention of deſtroying the government. No innocent man ever did or could have ſuffered under the law. No puniſhment could be inflicted till a jury was ſatisfied that a publication was falſe, and that the party charged knowing it to be falſe had published it with an evil deſign.

The miſconduct of the judges, however on this ſubject has been conſidered by the gentleman the more aggravated, by an attempt to extend the principles of the ſedition act, by an adoption of thoſe of the common law. Connected with this ſubject, ſuch an attempt was never made by the judges. They have held generally, that the conſtitution of the United States, was predicated upon an exiſting common law. Of the ſoundneſs of that opinion, I never had a doubt. I ſhould ſcarcely go too far, were I to ſay, that ſtript of the common law, there would be neither conſtitution nor government. The conſtitution is unintelligible without reference to the common law. And were we to go into our courts of juſtice with the mere Statutes of the United States, not a ſtep could be taken, not even a contempt could be puniſhed. Thoſe Statutes preſcribe no forms of pleadings, they contain no principles of evidence, they

furnish no rule of property. If the common law does not exist in most cases there is no law, but the will of the judge.

I have never contended, that the whole of the common law attached to the constitution, but only such parts as were consonant to the nature and spirit of our government. We have nothing to do with the law of the Ecclesiastical establishment, nor with any principle of monarchical tendency. What belongs to us, and what is unsuitable, is a question for the sound discretion of the judges. The principle is analogous to one which is found in the writings of all jurists and commentators. When a colony is planted, it is established subject to such parts of the law of the mother country as are applicable to its situation. When our fore-fathers colonized the wilderness of America, they brought with them the common law of England. They claimed it as their birth right, and they left it as the most valuable inheritance to their children. Let me say, that this same common law, now so much despised and vilified, is the cradle of the rights and liberties which we now enjoy. It is to the common law we owe our distinction from the colonists of France, of Portugal and of Spain. How long is it since we have discovered the malignant qualities which are now ascribed to this law? Is there a state in the Union which has not adopted it, and in which it is not in force? Why is it refused to the federal constitution? Upon the same principle, that every power is denied which tends to invigorate the government. Without this law, the constitution becomes, what perhaps many gentlemen wish to see it, a dead letter.

For ten years it has been the doctrines of our courts, that the common law was in force, and yet can gentlemen say, that there has been a victim who has suffered under it. Many have experienced its protection, none can complain of its oppression.

In order to demonstrate the aspiring ambition of this body politic, the judiciary, the honorable gentleman stated with much emphasis and feeling, that the judges had been hardy enough to send their mandate into the executive cabinet. Was the gentleman, sir, acquainted with the fact when he made this statement. It differs essentially from what I know and from what I have heard upon the subject. I shall be allowed to state the fact.

Several commissions had been made out by the late administration, for justices of the peace of this territory. The commissions were complete —they were signed and sealed, and left with the clerks of the office of State, to be handed to the persons appointed. The new administration found them on the clerk's table, and thought proper to withhold them. These officers are not dependent on the will of the President. The persons named in the commissions considered that their appointments were complete, and that the detention of their commissions was a wrong, and not justified by the legitimate authority of the Executive. They applied to the supreme court, for a rule upon the secretary of state, to shew cause why a mandamus should not issue, commanding him to deliver up the commissions. Let me ask, sir, what could the judges do? The rule to shew cause was a matter of course upon a new point in the least doubtful. To have denied it, would have been to shut the doors of justice against

the parties. It concludes nothing, neither the jurisdiction nor the regularity of the executive act. The judges did their duty. They gave an honorable proof of their independence. They listened to the complaint of an individual against your President, and have shewn themselves disposed to grant redress against the greatest man in the government, if a wrong has been committed, and the constitution authorizes their interference, will gentelemen say, that the secretary of state, or even the President is not subject to law? And if they violate the law, where can we apply for redress but to our courts of justice. But, sir, it is not true, that the judges issued their mandate to the executive; they have only called upon the secretary of state to shew them, that what he has done is right. It is but an incipient proceeding which decides nothing.

Mr. Giles rose to explain. He said, that the gentleman from Delaware had ascribed to him many things which he did not say, and had afterwards undertaken to refute them. He had only said, that mandatory process had issued, that the course pursued by the court indicated a belief by them, that they had jurisdiction, and that in the event of no cause being shewn, a mandamus would issue.

Mr. Bayard.—I stated the gentleman's words as I took them down. It is immaterial whether the mistake was in the gentleman's expression, or in my understanding. He has a right to explain, and I will take his position as he now states it. I deny, sir, that mandatory process has issued. Such process would be imperative, and suppose a jurisdiction to exist; the proceeding, which has taken place, is no more than notice of the application for justice made to the court, and allows the party to shew, either that no wrong has been committed, or that the court has no jurisdiction over the subject. Even, sir, if the rule were made absolute, and the mandamus issued, it would not be definitive, but it would be competent for the secretary in a return to the writ, to justify the act which has been done, or to shew that it is not a subject of judicial cognizance.

It is not till after an insufficient return that a peremptory mandamus issues. In this transaction, so far from seeing any thing culpable in the conduct of your judges, I think, sir, that they have given a strong proof of the value of that constitutional provision which makes them independent. They are not terrified by the frowns of executive power, and dare to judge between the rights of a citizen and the pretensions of a President.

I believe, Mr. Chairman, I have gone through most of the preliminary remarks which the honorable gentleman thought proper to make before he proceeded to the consideration of those points which properly belong to the subject before the committee. I have not supposed the topics I have been discussing, had any connection with the bill on your table; but I felt it as a duty not to leave unanswered charges against the former administrations and our judges, of the most insidious tendency; which I know to be unfounded, and which were calculated and designed to influence the decision on the measure now proposed. Why, Mr. Chairman, has the present subject been combined with the army, the navy, the internal taxes, and the sedition law? Was it to involve them in one common odium, and to consign them to a common fate? Do I see in the

preliminary remarks of the honorable member the title page of the volume of measures which are to be pursued? Are gentlemen sensible of the extent to which it is designed to lead them? The are now called on to reduce the army, to diminish the navy, to abolish the mint, to destroy the independence of the judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful source of monied interest and of aristocratic influence? Be assured, sir, we see but a small part of the system which has been formed. Gentlemen know the advantage of progressive proceedings, and my life for it, if they can carry the people with them, their carreer will not be arrested while a trace remains of what was done by the former administrations.

There was another remark of the honorable member which I must be allowed to notice. The pulpit, sir, has not escaped invective. The ministers of the gospel have been represented, like the judges, forgetting the duties of their calling and employed in disseminating the heresies of federalism. Am I then, sir, to understand that religion is also denounced, and thatyour churches are to be shut up? Are we to be deprived, sir, both of law and gospel? Where do the principles of the gentleman end? When the system of reform is completed what will remain? I pray God that this flourishing country which, under his providence, has attained such a height of prosperity, may yet escape the dessolation suffered by another nation, by the practice of similar doctrines.

I beg pardon of the committee for having consumed so much time upon points little connected with the subject of the debate. Till I heard the honorable member from Virginia yesterday, I was prepared only to discuss the merits of the bill upon which you are called to vote. His preliminary remarks were designed to have an effect which I deemed it material to endeavour to counteract, and I therefore yielded to the necessity of pursuing the course he had taken, though I was conscious of departing very far from the subject before the committee. To the discussion of that subject I now return with great satisfaction, and shall consider it under the two views it naturally presents; the constitutionality and the expediency of the measure. I find it most convenient to consider first, the question of expediency, and shall therefore beg permission to invert the natural order of the enquiry.

To shew the inexpediency of the present bill I shall endeavour to prove the expediency of the judicial law of the last session. In doing this it will be necessary to take a view of the leading features of the pre-existing system, to enquire into its defects, and to examine how far the evils complained of were remedied by the provisions of the late act.—It is not my intention to enter into the details of the former system; it can be necessary only to state so much as will distinctly shew its defects.

There existed, sir, a supreme court, having original cognizance in a few cases, but principally a court of appellate jurisdiction. This was the great national court of dernier resort. Before this tribunal questions of unlimited magnitude and consequence both of a civil and political nature received their final decision; and I may be allowed to call it the national crucible of justice, in which the judgments of inferior courts were to be

reduced to their elements and cleansed from every impurity. There was a circuit court, composed in each district of a judge of the supreme court and the district judge. This was the chief court of business both of a civil and criminal nature.

In each district a court was established for affairs of revenue and of admiralty and maritime jurisdiction. It is not necessary for the purposes of the present argument to give a more extensive outline of the former plan of our judiciary. We discover that the judges of the supreme court in consequence of their composing a part of the circuit courts, were obliged to travel from one extremity to the other of this extensive country. In order to be in the court house two months in the year they were forced to be upon the road six.—The supreme court being the court of last resort, having final jurisdiction over questions of incalculable importance, ought certainly to be filled with men not only of probity, but of great talents, learning, patience and experience. The union of these qualities is rarely, very rarely found in men who have not passed the meridian of life. My Lord Coke tells us no man is fit to be a judge till he has numbered the lucubrations of twenty years.—Men of studious habits are seldom men of strong bodies. In the course of things it could not be expected that men fit to be judges of your supreme courts would be men capable of traversing the mountains and wildernesses of this extensive country. It was an essential and great defect in this court, that it required in men the combination of qualities, which it is a phenomenon to find united. It required that they should possess the learning and experience of years and the strength and activity of youth. I may say further, Mr. Chairman, that this court, from its constitution, tended to deterioration and not to improvement. Your judges, instead of being in their closets and increasing by reflection and study their stock of wisdom and knowledge, had not even the means of repairing the ordinary waste of time. Instead of becoming more learned and more capable, they would gradually lose the fruits of their former industry. Let me ask if this was not a vicious construction of a court of the highest authority and greatest importance in the nation. In a court from which no one had an appeal and to whom it belonged to establish the leading principles of national jurisprudence.

In the constitution of this court as a court of last resort, there was another essential defect. The appeals to this court are from the circuit courts. The circuit court consists of the district judge and a judge of the supreme court. In cases where the district judge is interested, where he has been counsel, & where he has decided in the court below, the judge of the supreme court alone composes the circuit court. What then is substantially the nature of this appellate jurisdiction? In truth and practice the appeal is from a member of a court to the body of the same court. The circuit courts are but emanations of the supreme court. Cast your eyes on the supreme court; you see it disappear, and its members afterwards arising in the shape of circuit judges. Behold the circuit judges; they vanish and immediately you perceive the form of the supreme court appearing. There is, sir, a magic in this arrangement which is not friendly to justice. When the supreme court assembles, appeals come

from the various circuits of the United States. There are appeals from the decisions of each judge. The Judgments of each member pass in succession under the revision of the whole body. Will not a judge while he is examining the sentence of a brother to day, remember that that brother will sit in judgment upon his proceedings to morrow? Are the members of a court thus constituted, free from all motive, exempt from all bias which could even remotely influence opinion on the point of strict right; and yet let me ask emphatically, whether this court, being the court of final resort, should not be so constituted, that the world should believe, and every suitor be satisfied, that in weighing the justice of a cause nothing entered the scales but its true merits.

Your supreme court, sir, I have never considered as any thing more than the judges of assize sitting in bank. It is a system with which perhaps I should find no fault, if the judges sitting in bank did not exercise a final jurisdiction. Political institutions should be so calculated as not to depend upon the virtues, but to guard against the vices and weaknesses of men. It is possible that a judge of the supreme court, would not be influenced by the esprit du corps, that he would neither be gratified by the affirmance nor mortified by the reversal of his opinions; but this, sir, is estimating the strength and purity of human nature upon a possible but not on its ordinary scale.

I believe, Mr. Chairman, that in practice, the formation of the supreme court frustrated in a great degree the design of its institution. I believe that many suitors were discouraged from seeking a revision of the opinions of the circuit court by a deep impression of the difficulties to be surmounted in obtaining the reversal of the judgment of a court from the brethren of the judge who pronounced the judgment. The benefit of a court of appeals well constituted is not confined to the mere act of reviewing the sentence of an inferior court, but is more extensively useful by the general operation of the knowledge of its existence upon inferior courts. The power of uncontrolable decision is of the most delicate and dangerous nature. When exercised in the courts it is more formidable than by any other branch of the government. It is the judiciary only which can reach the person, the property, or life of an individual. The exercise of their power is scattered over separate cases, & creates no common cause. The great safety under this power arises from the right of appeal. A sense of this right combines the reputation of the judge with the justice of the cause. In my opinion it is a strong proof of the wisdom of a judicial system when few causes are carried into the court of the last resort. I would say, if it were not paradoxical, that the very existence of a court of appeals ought to destroy the occasion for it. The conscience of the judge, sir, will no doubt be a great check upon him in the unbounded field of discretion created by the uncertainty of law, but I should in general cases more rely upon the effect produced by his knowledge, that an inadvertent or designed abuse of power was liable to be corrected by a superior tribunal. A court of appellate jurisdiction organized upon sound principles should exist, though few causes arose for their decision; for it is surely better to have a court

and no causes, than to have causes and no court. I now proceed, sir, to consider the defects which are plainly discernable, or which have been discovered by practice in the ancient constitution of the circuit courts.

These courts from information which I have received, I apprehend were originally constructed upon a fallacious principle. I have heard it stated that the design of placing the judges of the supreme court in the circuit courts, was to establish uniform rules of decision throughout the United States. It was supposed, that the presiding judges of the circuit courts proceeding from the same body would tend to identify the principles and rules of decision in the several districts. In practice a contrary effect has been discovered to be produced by the peculiar organization of these courts. In practice we have found not only a want of uniformity of rule between the different districts—but no uniformity of rule in the same district. No doubt there was an uniformity in the decisions of the same judge, but as the same judge seldom sat twice successively in the same district, & sometimes not till after an interval of 2 or 3 years, his opinions were forgotten or reversed before he returned. The judges were not educated in the same school. The practice of the courts, the forms of proceeding as well as the rules of the property are extremely various in the different quarters of the United States. The lawyers of the Eastern, the middle and Southern states are scarcely professors of the same science. These courts were in a state of perpetual fluctuation. The successive terms gave you courts in the same district, as different from each other as those of Connecticut and Virginia. No system of practice could grow up, no certainty of rule could be established. The seeds sown in one term scarcely vegitated before they were trodden under foot. The condition of a suitor was terrible—the ground was always trembling under his feet. The opinion of a former judge was no precedent to his successor. Each considered himself bound to follow the light of his own understanding. To exemplify these remarks I will take the liberty of stating a case which came under my own observation. An application before one judge was made to quash at attachment in favor of a subsequent execution creditor—the application was resisted upon two grounds, and the learned judge, to whom the application was first made, expressing his opinion in support of both grounds, dismissed the motion. At the succeeding court a different judge presided, and the application was renewed and answered upon the same grounds. The second learned judge was of opinion, that one point had no validity, but he considered the other sustainable, and was about also to dismiss the motion, but upon being pressed at last consented to grant a rule to shew cause. At the third term, a third learned judge was on the bench, and though the case was argued upon its former principles he was of opinion, that both answers to the application were clearly insufficient, and accordingly quashed the attachment. When the opinions of his predecessors were cited, he replied, that every man was to be saved by his own faith. Upon the opinion of one judge, a suitor would set out in a long course of proceedings and after losing much time and wasting much money he would be met by another judge, who would tell

him he had mistaken his road, that he must return to the place from which he started, and pursue a different track. Thus it happened as to the chancery process to compel the appearance of a defendant. Some of the judges considered themselves bound by the rules in the English books, while others conceived that a power belonged to the court upon the service of a subpœna to make a short rule for the defendant to appear and answer, or that the bill should be taken pro confesso. A case of this kind occurred, where much embarrassment was experienced. In the circuit court for the district of Pennsylvania a bill in chancery was filed against a person, who then happened to be in that district, but whose place of residence was in the North-Western Territory. The subpœna was served, but there was no answer nor appearance. The court to which the writ was returned, without difficulty, upon an application, granted a rule for the party to appear and answer at the expiration of a limited time, or that the bill be taken pro confesso. A personal service of this rule being necessary, the complainant was obliged to hire a messenger to travel more than a thousand miles to serve a copy of the rule. At the ensuing court, affidavit was made of the service and a motion to make the rule absolute. The scene immediately changed, a new judge presided, and it was no longer the same court.

The authority was called for, to grant such a rule; was it warranted by any act of congress, or by the practice of the state? It was answered there is no act of congress, and the state has no court of chancery. But this proceeding was instituted and has been brought to its present stage, at considerable expence, under the direction of this court. The judge knew of no power the court had to direct the proceeding, and he did not consider that the complainant could have a decree upon his bill without going through the long train of process found in the books of chancery practice. The complainant took this course, and at a future time was told by another judge, that he was incurring an unnecessary loss of time and money, and that a common rule would answer his purpose. I ask you, Mr. Chairman, if any system could be devised more likely to produce vexation and delay. Surely, sir, the law is uncertain enough in itself, and its paths sufficiently intricate and tedious, not to require that your suitors should be burthened with additional embarrassments by the organization of your courts.

The circuit is the principal court of civil and criminal business; the defects of this court were therefore most generally and sensibly felt. The high characters of the judges at first brought suitors into the courts, but the business was gradually declining, though causes belonging to the jurisdiction of the courts were multiplying. The continual oscillation of the court baffled all conjecture as to the correct course of the proceeding or the event of a cause. The law ceased to be a science. To advise your client it was less important to be skilled in the books than to be acquainted with the character of the judge who was to preside. When the term approached, the enquiry was, what judge are we to have?

What is his character as a lawyer? Is he acquainted with chancery law? Is he a strict common lawyer! Is he a special pleader?

When the character of the judge was ascertained; gentlemen would then, considering the nature of their causes, determine whether it was more advisable to use means to postpone or to bring them to a hearing.

The talents of the judges rather encreased the evil, than afforded a corrective for the vicious constitution of these courts. They had not drawn their knowledge from the same sources: Their systems were different, and hence the character of the court more essentially changed at each successive term. These difficulties and embarrassments banished suitors from the court, and without more than a common motive, recourse was seldom had to the federal tribunals.

I have ever considered it also, as a defect in this court, that it was composed of judges of the highest and lowest grades. This, sir, was an unnatural association; the members of the court stood on ground too unequal, to allow the firm assertion of his opinion to the district judge. Instead of being elevated, he felt himself degraded by a seat upon the bench of this court. In the district court he was every thing, in the circuit court he was nothing. Sometimes he was obliged to leave his seatwhile his associate reviewed the judgment which he had given in the court below. In all cases he was sensible that the sentences in the court in which he was, were subject to the revision and control of a superior jurisdiction, where he had no influence, but the authority of which was shared by the judge with whom he was acting. No doubt in some instances the district judge was an efficient member of the court, but this never arose from the nature of the system, but from the personal character of the man. I have yet, Mr. Chairman, another fault to find with the ancient establishment of the circuit courts. They consisted only of two judges, and sometimes of one. The number was too small, considering the extent and importance of the jurisdiction of the court. Will you remember, sir, that they hold the power of life and death, without appeal. That their judgments were final over sums of 2000 dollars, and their original jurisdiction restrained by no limits of value, and that this was the court to which appeals were carried from the district court.

I have often heard, sir, that in a multitude of council, there was wisdom, and if the converse of the maxim be equally true, this court must have been very deficient. When we saw a single judge reversing the judgment of the district court, the objection was most striking, but the court never had the weight which it ought to have possessed and would have enjoyed had it been composed of more members.

But two judges belonging to the court an inconvenience was sometimes felt from a division of their opinions. And this inconvenience was but poorly obviated by the provision of the law that in such cases, the cause should be continued to the succeeding term, and receive its decision from the opinion of the judge who should then preside.

I do not pretend, Mr. Chairman, to have enumerated all the defects, which belonged to the former judicial system. But I trust those which I have pointed out, in the minds of candid men, will justify the attempt of the legislature to revise that system, and to make a fairer experiment of that part of the plan of our constitution which regards the judicial power. The defects, sir, to which I have alluded, had been a long time felt and often spoken of. Remedies had frequently been proposed. I have known the subject brought forward in congress or agitated in private, ever since I have had the honor of a seat upon this floor. I believe, sir, a great and just deference for the author of the ancient scheme, prevented any innovation upon its material principles. There was no gentleman, who felt that deference more than myself, nor should I have ever hazarded a change upon speculative opinion. But practice had discovered defects which might well escape the most discerning mind in planning the theory. The original system could not be more than experiment; it was built upon no experience. It was the first application of principles to a new state of things. The first judicial law displays great ability, and it is no disparagement of the author, to say its plan is not perfect.

I know, sir, that some have said, and perhaps not a few have believed, that the new system was introduced not so much with a view to its improvement of the old, as to the places which it provided for the friends of the administration. This is a calumny so notoriously false, and so humble as not to require nor to deserve an answer upon this floor. It cannot be supposed that the paltry object of providing for sixteen unknown men could have ever offered an inducement to a great party, basely to violate their duty; meanly to sacrifice their character, and foolishly to forego all future hopes.

I now come, Mr. Chairman, to examine the changes which were made by the late law. This subject has not been correctly understood. It has every where been erroneously represented. I have heard much said about the additional courts created by the act of last session. I perceive them spoken of in the president's message. In the face of this high authority, I undertake to state, that no additional court was established by that law. Under the former system there was one supreme court, and there is but one now. There were seventeen district courts, and there are no more now. There was a circuit court held in each district, and such is the case at present. Some of the district judges are directed to hold their courts at new places, but there is still in each district but one district court. What, sir, has been done? The unnatural alliance between the supreme and district courts has been severed, but the jurisdiction of both those courts remains untouched. The power or authority of neither of them has been augmented or diminished.—The jurisdiction of the circuit court has been extended to the cognizance of debts of 400 dollars, & this is the only material change in the power of that court. The chief operation of the late law is a new organization of the circuit courts. To avoid the evils of the former plan, it became necessary to create a new corps of judges. It was considered that the supreme court

ought to be stationary and to have no connection with the judges over whose sentences they had an appellate jurisdiction.

To have formed a circuit court out of the district judges, would have allowed no court of appeal from the distict court, except the supreme court, which would have been attended with great inconvenience. But this scheme was opposed by a still greater difficulty. In many districts the duties of the judge require a daily attention. In all of them business of great importance may on unexpected occurrences require his presence.

This plan was thought of; it was well examined and finally rejected, in consequence of strong objections to which it was liable. Nothing therefore remained, but to compose the circuit court of judges distinct from those of the other courts. Admitting the propriety of excluding from this court the judges of the supreme and district courts, I think the late congress cannot be accused of any wanton expence nor even of a neglect of economy in the new establishment. This extensive country has been divided into six circuits, and three judges appointed for each circuit. Most of the judges have twice a year to attend a court in three states, and there is not one of them who has to travel farther, and who in time will not have more labor to perform, than any judge of the state courts. When we call to mind, that the jurisdiction of this court reaches the life of the citizen, and that in civil cases its judgments are final to a large amount; certainly it will not be said that it ought to have been composed of less than three judges. One was surely not enough, and if it had been doubtful whether two were not sufficient, the inconvenience, which would have frequently arisen from an equal division of opinion, justifies the provision which secures a determination in all cases.

It was additionally very material to place on the bench of this court, a judge from each state, as the court was in general bound to conform to the law and the practice of the several states.

I trust, sir, the committee are satisfied that the number of judges which compose the circuit court is not too great, and that the legislature would have been extremely culpable, to have committed the high powers of this court to fewer hands. Let me now ask, if the compensation allowed to these judges is extravagant. It is little more than half the allowance made to the judges of the supreme court. It is but a small proportion of the ordinary practice of those gentlemen of the bar, who are fit, and to whom we ought to look to fill the places.—You have given a salary of 2000 dollars. The puisne judges of Pennsylvania, I believe, have more. When you deduct the expences of the office, you will leave but a moderate compensation for service, but a scanty provision for a family. When, Mr. Chairman, gentlemen coolly consider the amendments of the late law I flatter myself their candour will at least admit that the present modification was fairly designed to meet and remedy the evils of the old system.

The supreme court has been rendered stationary. Men of age, of learning, and of experience, are now capable *of holding* a seat on the bench; they have time to mature their opinions in causes on which they are called to decide, and they have leisure to devote to their books, and to augment

their store of knowledge. It was our hope by the present establishment of the court, to render it the future pride, and honor, and safety of the nation. It is this tribunal which must stamp abroad the judicial character of our country. It is here, that ambassadors and foreign agents resort for justice, and it belongs to this high court to decide finally, not only on controversies of unlimited value between individuals, and on the more important collision of state pretensions, but also upon the validity of the laws of the states, and of this government. Will it be contended that such great trusts ought to be reposed in feeble or incapable hands. It has been asserted that this court will not have business to employ it. The assertion is supported neither by what is past, nor by what is likely to happen. During the present session of Congress at their last term the court was fully employed for two weeks in the daily hearing of causes. But its business must encrease. There is no longer that restraint upon appeals from the circuit court, which was imposed by the authority of the judge of the court to which the appeal was to be carried; no longer will the apprehension of a secret unavoidable bias in favour of the decision of a number of their own body, shake the confidence of a suitor, in resorting to this court, who thinks that justice has not been done to him in the court below. The progressive encrease of the wealth and population of the country, will unavoidably swell the business of the court. But there is a more certain and unfailing source of employment, which will arise in the appeals from the courts of the national territory. From the courts of original cognizance in this territory, it affords the only appellate jurisdiction. If gentlemen will look to the state of property of a vast amount in this city, they must be satisfied that the supreme court will have enough to do for the money which is paid them.

Let us next consider, sir, the present state of the circuit courts.

There are six courts, which sit in twenty two districts, each court visits at least three districts, some four. The courts are now composed of three judges of equal power and dignity. Standing on equal ground their opinions will be independent and firm. Their number is the best for consultation, and they are exempt from the inconvenience of an equal division of opinion. But what I value most, and what was designed to remedy the great defect of the former system, is the identity which the court maintains. Each district has now always the same court. Each district will hereafter have a system of practice and uniformity of decision. The judges of each circuit will now study, and learn and retain the laws and practice of their respective districts. It never was intended, nor is it practicable that the same rule of property or of proceeding should prevail from New-Hampshire to Georgia. The old courts were enjoined to obey the laws of the respective states. Those laws fluctuate with the will of the state legislatures, and no other uniformity could ever be expected, but in the construction of the constitution and statutes of the United States. This uniformity is still preserved by the control of the supreme court over the courts of the circuits. Under the present establishment, a rational system of jurisprudence will arise. The practice and local laws of the different districts may vary, but in the same district they will be uniform. The practice

of each district will suggest improvements to the others, the progressive adoption of which will in time assimilate the systems of the several districts.

It is unnecessary, Mr. Chairman, for me to say any thing in relation to the district courts. Their former jurisdiction was not varied by the law of the last session.

It has been my endeavour, sir, to give a correct idea of the defects of the former judicial plan, and of the remedies for those defects introduced by the law now designed to be repealed. I do not pretend to say that the present system is perfect, I contend only that it is better than the old. If, sir, instead of destroying, gentlemen will undertake to improve the present plan, I will not only applaud their motives, but will asist in their labour. We ask only that our system may be tried. Let the sentence of experience be pronounced upon it. Let us hear the national voice after it has been felt. They will then be better able to judge its merits. In practice it has not yet been complained of; and as it is designed for the benefit of the people, how can their friends justify the act of taking it from them before they have manifested their disposition to part with it?

How, sir, am I to acount for the extreme anxiety to get rid of this establishment. Does it proceed from that spirit which since power has been given to it, has so unrelentingly persecuted men in office who belonged to a certain sect? I hope there will be a little patience; these judges are old and infirm men; they will die; they must die; wait but a short time, their places will be vacant; they will be filled by the disciples of the new school, and gentlemen will not have to answer for the political murder which is now meditated.

I shall take the liberty now, sir, of paying some attention to the objections which have been expressed against the late establishment. An early exception, which in the course of the debate, has been abandoned by most gentlemen, and little relied on by any one, is the additional expence. The gentleman from Virginia stated the expence of the present establishment at 137,000 dollars.—On this head the material question is, not what is the expence of the whole establishment, but what will be saved by the repealing law on the table. I do not estimate the saving at more than 28,500 dollars. You save nothing but the salaries of 16 judges of 2000 dollars each. From this amount is to be deducted the salary of a judge of the supreme court, which is 3,500 dollars. Abolishing the present system will not vary the incidental expences of the circuit court. You revive a circuit court whose incidental expences will be equal to those of the court you destroy. The encreased salaries of the district judges of Kentucky and Tennessee must remain. It is not proposed to abolish their offices, and the admissions upon the other side allow that the salaries cannot be reduced.

If there were no other objection, the present bill could not pass without amendment, because it reduces the salaries of those judges, which is a plain undeniable infraction of the constitution. But, sir, it is not a fair way of treating the subject to speak of the aggregate expence. The great enquiry is, whether the judges are necessary, and whether the salaries

allowed to them are reasonable? Admitting the utility of the judges, I think no gentleman will contend, that the compensation is extravagant.

We are told of the expence attending the federal judiciary. Can gentlemen tell me of a government under which justice is more cheaply administered, add together the salaries of all your judges and the amount but little exceeds the emoluments of the Chancellor of England. Ascertain the expences of state justice, and the proportion of each state of the expence of federal justice, and you will find that the former is five times greater than the latter. Do gentlemen expect that a system expanded over the whole union is to cost no more than the establishment of a single state? Let it be remembered, sir, that the judiciary is an integral and co-ordinate part with the highest branches of the government.—No government can long exist without an efficient judiciary. It is the judiciary which applies the law and enables the executive to carry it into effect. Leave your laws to the judiciaries of the states to execute, and my word for it in ten years you have neither law nor constitution. Is your judiciary so costly that you will not support it? Why then lay out so much money upon the other branches of your government? I beg that it will be recollected that if your judiciary costs your thousands of dollars, you legislature costs you hundreds of thousands, and your executive millions.

An objection has been derived from the paucity of causes in the federal courts, and the objection has been magnified by the allegation, that the number had been anually decreasing. The facts admitted, I draw a very different inference from my opponents. In my opinion they furnish the strongest proof of the defects of the former establishment, and of the necessity of a reform. I have no doubt, nay, I know it to be a fact that many suitors were diverted from those tribunals by the fluctuations to which they were subject. Allow me however, to take some notice of the facts. They are founded upon the presidential document No. 8. Taking the facts as there stated, they allow upwards of 50 suits annually for each court, whenit is considered that these causes must each have exceeded the value of 500 dols. and that they were generally litigated cases, I do not conceive, that there is much ground to affirm, that the courts were without business. But, sir, I must be excused for saying, I pay little respect to this document. It has been shewn by others in several points to be erroneous, & from my own knowledge, I know it to be incorrect. What right had the President to call upon the clerks to furnish him with a list of the suits which had been brought, or were depending in their respective courts? Had this been directed by Congress, or was their any money appropriated to pay the expence? Is their any law which made it the duty of the clerks to obey the order of the executive? Are the clerks responsible for refusing the lists, or for making false or defective returns? Do we know any thing about the authenticity of the certificates made by the clerks? And are we not now aiming a mortal blow at one branch of the government, upon the credit, and at the instigation of another and a rival department? Yes, sir, I say at the instigation of the President, for I consider this business wholly as a Presidential measure. This document and his message shew that it originated with him; I consider it as now

prosecuted by him, and I believe that he has the power to arrest its progress, or to accomplish its completion. I repeat that it is his measure. I hold him responsible for it; and I trust in God that the time will come when he will be called upon to answer for it as his act. And I trust the time will arrive, when he will hear us speaking upon the subject more effectually.

It has been stated as the reproach, sir, of the bill of the last session, that it was made by a party at the moment when they were sensible, that their power was expiring and passing into other hands. It is enough for me, that the full and legitimate power existed. The remnant was plenary and efficient. And it was our duty to employ it according to our judgments and consciences for the good of the country. We thought the bill a salutary measure, and there was no obligation upon us to leave it as a work for our successors. Nay, sir, I have no hesitation in avowing, that I had no confidence in the persons who were to follow us. And I was the more anxious while we had the means to accomplish a work which I believed they would not do, & which I sincerely thought, would contribute to the safety of the nation by giving strength and support to the constitution through the storm to which it was likely to be exposed. The fears, which I then felt, have not be dispelled, but multiplied by what I have since seen. I know nothing which is to be allowed to stand. I observe the institutions of the government falling around me, and where the work of destruction is to end God alone knows. We discharged our consciences in establishing the judicial system, which now exists, and it will be for those who now hold the power of the government to answer for the abolition of it, which they at present meditate. We are told that our law was against the sense of the nation. Let me tell those gentlemen, they are deceived, when they call themselves the nation. They are only a dominant party, and though the sun of federalism should never rise again, they will shortly find men better or worse than themselves thrusting them out of their places. I know it is the cant of those in power, however they have acquired it, to call themselves the nation. We have recently witnessed an example of it abroad. How rapidly did the nation change in France, at one time Brissot called himself the nation—then Robespierre, afterwards Tallien and Barras, and finally Buonaparte. But their dreams were soon dissipated, and they awoke in succession upon the scaffold, or in banishment. Let not these gentlemen flatter themselves that heaven has reserved for them a peculiar destiny. What has happened to others in this country, they must be liable to. Let them not exult too highly in the enjoyment of a little brief and fleeting authority. It was ours yesterday, it is theirs to day, but to-morrow it may belong to others.

[Mr. Bayard here stated, that he had gone through the remarks he had to make connected with the first point of the debate; that he observed, that the common hour of adjournment had gone by, and that he should sit down in order to allow the committee to rise, if they thought proper; and that he should beg leave to be heard the follow-

ing day upon the second point. After some conversation, the committee rose, reported— and the house adjourned.]

SATURDAY, *February* 20, 1802.

I owe to the committee the expression of my thanks for the patience with which they attended to the laborious discussion of yesterday.

It will be my endeavor in the remarks which I have to offer upon the remaining point of the debate, to consume no time which the importance of the subject does not justify. I have never departed from the question before the committee, but with great reluctance. Before I heard the gentleman from Virginia, I had not an observation to make unconnected with the bill on the table. It was he who forced me to wander on foreign ground, and be assured, sir, I shall be guilty of no new digressions where I am not covered by the same justification.

I did think that this was an occasion when the house ought to have been liberated from the dominion of party spirit, and allowed to decide upon the unbiassed dictates of their understanding. The vain hope which I indulged that this course would be pursued was soon dissipated by the inflammatory appeal made by the gentleman from Virginia, to the passions of his party. This appeal, which treated with no respect the feelings of one side of the house, will excuse recriminations which have been made, or which shall be retorted. We were disposed to conciliate, but gentlemen are deceived if they think that we will submit to be trampled on.

I shall now, sir, proceed to the consideration of the second point which the subject presents. However this point may be disguised by subtilties, I conceive the true question to be—has the legislature a right by a law to remove a judge? Gentlemen may state their question to be, has the legislature a right by law to vacate the office of a judge? But, as in fact they remove the judge, they are bound to answer our question.

The question which I state they will not meet. Nay, I have considered it as conceded upon all hands, that the legislature have not the power of removing a judge from his office; but it is contended only that the office may be taken from the judge. Sir, it is a principle in law which ought, and I apprehend does, hold more strongly in politics; that what is prohibited from being done directly is restrained from being done indirectly. Is there any difference but in words, between taking the office from a judge and removing the judge from the office? Do you not indirectly accomplish the end, which you admit is prohibited. I will not say that it is the sole intention of the supporters of the bill before us, to remove the circuit judges from their offices; but I will say that they establish a precedent, which will enable worse men than themselves to make use of the legislative power for that purpose upon any occasion. If it be constitutional to vacate the office, and in that way to dismiss the judge, can there be a question as to the power to recreate the office and to fill it with another man? Repeal to-day the bill of

the laſt ſeſſion, and the circuit judges are no longer in office. To-morrow reſcind this repealing act (and no one will doubt the right to do it) and no effect is produced but the removal of the judges. To ſuppoſe that ſuch a caſe may occur is no vagary of imagination. The thing has been done, shamelesly done in a neighbouring ſtate. The judges there held their offices upon the ſame tenure with the judges of the United States. Three of them were obnoxious to the men in power. The judicial law of the ſtate was repealed, and immediately reenacted without a veil being thrown over the tranſaction. The obnoxious men were removed, their places ſupplied with new characters, and the other judges were reappointed. Whatever ſophiſtry may be able to ſhew in theory, in practice there never will be found a difference in the exerciſe of the powers of removing a judge and of vacating his office.

The queſtion, which we are now conſidering, depends upon the proviſions contained in the conſtitution. It is an error often committed, upon plain ſubjects to ſearch for reaſons very profound. Upon the preſent ſubject the ſtrong proviſions of the conſtitution are ſo obvious, that no eye can overlook them. They have been repeatedly cited, and as long as the queſtion ſtated is under diſcuſſion, they muſt be reiterated. There are two prominent proviſions to which I now particularly allude. 1ſt. The judges ſhall hold their offices during good behaviour. 2d. Their compenſation ſhall not be diminiſhed during their continuance in office. Theſe are proviſions ſo clearly underſtood upon the firſt impreſſion, that their meaning is rather obſcured than illuſtrated by argument. What is meant, and what has been univerſally underſtood by the tenure of "good behaviour?" *A tenure for life* if the judge commit no miſdemeanor. It is ſo underſtood and expreſſed in England, and ſo it has always been received and admitted in this country. The *expreſs* proviſion then of the conſtitution defines the tenure of a judge's office; a tenure during life. How is that tenure *expreſsly* qualified? By the good behaviour of the judge. Is the tenure qualified by any other *expreſs* condition or limitation? No other. As the tenure is *expreſs*, as but one *expreſs* limitation is impoſed upon it, can it be ſubject to any other limitation not derived from neceſſary implication. If any material proviſion in the conſtitution can in no other manner be ſatisfied, than by ſubjecting the tenure of this office to ſome new condition, I will then admit that the tenure is ſubject to the condition.

Gentlemen have ventured to point out a proviſion which they conceived furniſhed this neceſſary implication. They refer to the power given to congreſs from time to time to eſtabliſh courts inferior to the ſupreme court. If this power cannot be exerciſed without vacating the offices of exiſting judges, I will concede that thoſe offices may be vacated.—But on this head there can be no controverſy. The power has been, and at all times may, be exerciſed without vacating the office of any judge. It was ſo exerciſed at the laſt ſeſſion of congreſs; and I ſurely do not now diſpute the right of gentlemen to eſtabliſh as many new courts as they may deem expedient. The power to eſtabliſh new courts does not therefore neceſſarily imply a power to abolish the offices of exiſting

judges, because the existence of those offices does not prevent an execution of the power.

The clause in the constitution to which I have just alluded, has furnished to gentlemen their famous position, that though you cannot remove a judge from his office, you may take the office from the judge. Though I should be in order, I will not call this a quibble, but I shall attempt in the course of the argument, yet more clearly to prove that it is one, I do not contend that you cannot abolish an empty office, but the point on which I rely is, that you can do no act which impairs the independence of a judge. When gentlemen assert that the office may be vacated notwithstanding the incumbency of the judge, do they consider that they beg the very point which is in controversy. The office cannot be vacated without violating the express provision of the constitution in relation to the tenure.

The judge is to hold the office during good behaviour. Does he hold it when it is taken from him? Has the constitution said, that he shall hold the office during good behaviour, unless congress shall deem it expedient to abolish the office? If this limitation has been omitted, what authority have we to make it a part of the constitution?

The second plain, unequivocal provision, on this subject is, that the compensation of the judge shall not be diminished during the time he continues in office. This provision is directly levelled at the power of the legislature. They alone could reduce the salary. Could this provision have any other design than to place the judge out of the power of congress? and yet how imperfect and how absurd the plan. You cannot reduce a part of the compensation, but you may extinguish the whole. What is the sum of this notable reasoning? You cannot remove the judge from the office, but you may take the office from the judge. You cannot take the compensation from the judge, but you may separate the judge from the compensation.

If your constitution cannot resist reasoning like this, then indeed is it waste paper.

I will here turn aside, in order to consider a variety of arguments drawn from different sources, on which gentlemen on the other side have placed a reliance. I know of no order in which they can be classed, and I shall therefore take them up as I meet with them on my notes. It was urged by the honorable member from Virginia, to whom I have so frequently referred, that what was created by law, might by *law* be annihilated. In the application of his principle, he disclosed views which I believe, have not yet been contemplated by gentlemen of *his* party.—He was industrious to shew that not only the inferior courts, but the supreme court derives its existence from law. The president and legislature exist under the constitution. They came into being without the aid of a law. But though the constitution said, there should be a supreme court, no judges could exist till the court was organized by a law. This argument, I presume, was pushed to this extent in order to give notice to the judges of the supreme court of their fate, and to bid them prepare for their end.

I shall not attempt to discriminate between the tenure of the offices of the judges of the supreme and inferior courts. Congress has power to organize both descriptions of courts, and to limit the number of judges, *but they have no power to limit or define the tenure of office.* Congress creates the office; the president appoints the officer, but it is neither under congress or the president, *but under the constitution, that the judge claims to hold the office during good behaviour.* The principle asserted does not in this case apply; the tenure of office is not created by law, and if the truth of the principle were admitted, it would not follow, that the tenure of the office might be vacated by law. But the principle is not sound. I will shew a variety of cases which will prove its fallacy. Among the obnoxious measures of the late administration, was the loan of five millions, which was funded at 8 per cent. The loan was created by a law and funded by law. Is the gentleman prepared to say, that this debt, which was funded by a law of the former legislature, may be extinguished by a law of the present. Can you, by calling the interest of this debt exorbitant and usurious, justify the reduction of it?—Gentlemen admit that the salary of a judge, though established by a law, cannot be diminished by a law. The same thing must be allowed with respect to the salary of the president. Sir, the true principle is, that one legislature may repeal the act of a former, in cases not prohibited by the constitution. The correct question therefore is, whether the legislature are not forbidden by the constitution to abridge the tenure of a judicial office?

In order to avoid cases of a nature similar to those which I have put, the gentleman from Kentucky, (Mr. Davis) and after him the gentleman from Virginia, endeavoured to draw a distinction between laws executed, and laws executory.

The distinction was illustrated by reference to the case of a state admitted by a law into the union. Here it is said the law is executed, and functus officio, and if you repeal it, still the state remains a member of the union. But it was asked by the gentleman from Kentucky, supposing a law made to admit a state into the union, at a future time, before the time of admission arrived, could not the law be repealed. I will answer the question to the satisfaction of the gentleman, by stating a case which exists. By an ordinance of congress, in the year 1787, congress ordained, that when the population within the limits of a state within the North Western Territory, should amount to 60,000 souls, the district should be admitted as a member of the union. Will the gentleman venture to doubt as to this case? Would he dare to tell the people of this country that congress had the power to disfranchise them?

The law, in the case I refer to, is executory, though the event upon which it is to take effect is limited by population and not by time.

But, sir, if there were any thing in the principle, it has no influence upon the case to which it has been applied. A law has created the office of a judge, the judge has been appointed and the office filled. The law is therefore executed, and upon the very distinction of the gentleman, cannot be repealed. The law fixing the compensation is executory, and

so is that which establishes the salary of the President, but tho' executory they cannot be repealed. The distinction therefore is idle, and leaves the question upon the ground of the repeal, being permitted or prohibited by the constitution. I shall now advert, sir, to an argument urged with great force and not a little triumph, by the honorable member from Virginia. This argument is derived from the word, 'hold' in the expression, he judge shall *hold* his office during good behaviour. It is considered as correlative to tenure. The gentleman remarks, that the constitution provides, that the President shall nominate the judge to his office, and when approved by the senate shall commission him. It is hence inferred, that as the president nominates and commissions the judge, the judge *holds* the office of the president; and that when the constitution provides, that the tenure of the office shall be during good behavior, the provision applies to the president, & restrains the power which otherwise would result in consequence of the offices being *holden* of him, to remove the judges at will. This is an argument, sir, which I should have thought, that honorable member would have been the last person upon this floor to have adopted. It not only imputes to the president royal attributes, but prerogatives, derived from the rude doctrines of the feudal law. Does the gentleman mean to contend, that the president of these states, like the monarch of England, is the fountain of honor, of justice and of office? Does he mean to contend, that the courts are the President's courts and the judges, the president's judges? Does he mean to say, sir, that the chief magistrate is always supposed to be present in these courts, and that the judges are but the images of his justice? To serve the paltry purposes of this argument, would the gentleman be willing to infuse into our constitution, the vital spirit of the feudal doctrines? He does not believe, he cannot believe, that when the word 'hold' was employed, any reference was had to its feudal import. The language of the constitution furnishes no support to this feudal argument. These officers are not called the judges of the President, but the judges of the United States. They are a branch of the government equally important, and designed to be co-ordinate with the president. If, sir, because the President nominates to office and commissions, the office is held of him, for a stronger reason where by patent he grants lands of the United States, the lands are held of him. And upon the grantee's dying without heirs, the lands would escheat not to the United States, but to the President. In England, the tenure of lands and offices is derived from the same principle. All lands are held mediately or immediately of the crown, because they are supposed to have been originally acquired from the personal grant of the monarch. It is the same of office, as the king is supposed to be the source of all offices. Having the power to grant, he has a right to define the terms of the grant. These terms constitute the tenure. When the terms fail, the tenure ceases, and the object of the grant reverts to the grantor. This gentleman has charged others with monarchical tendencies, but never have I before witnessed an attempt so bold and strong to incorporate in our con-

stitution, a rank monarchical principle. If, sir, the principle of our constitution on this subject be republican and not monarchical, and the judges hold their offices of the United States, and not of the President, then the application of his argument has all the force against the gentleman, which he designed it should have against his adversaries. For if the office be held of the United States, and the tenure of good behaviour was designed to restrain the power of those of whom the office was holden it will follow, that it was the intention to restrain the power of the United States.

We were told by an honorable gentleman from Virginia, who rose early in the debate, (Mr. Thompson) that the principles we advocated tended to establish a sinecure system in the country. Sir, I am as little disposed to be accessary to the establishment of such a system as any gentleman on this floor. But let me ask how this system is to be produced? We established judicial offices, to which numerous and important duties were assigned. A compensation has been allowed to the judges, which no one will say, is immoderate, or disproportioned to the service to be rendered. These gentlemen first abolish the duties of the offices, then call the judges pensioners, and afterwards accuse us of establishing sinecures. There are no pensioners at present, if there should be any, they will be the creatures of this law. I have ever considered it as a sound and moral maxim, that no one should avail himself of his own wrong. It is a maxim, which ought be equally obligatory upon the public as upon the private man. In the present case, the judge offers you his service. You cannot say, it is not worth the money you pay for it. You refuse to accept the service; and after engaging to pay him while he continued to perform the service, you deny him his compensation, because he neglects to render services which you have prevented him from performing. Was injustice ever more flagrant? Surely, sir, the judges are innocent. If we did wrong, why should they be punished and disgraced? They did not pass the obnoxious law, they did not create the offices, they had no participation in the guilty business, but they were invited upon the faith of government, to renounce their private professions, to relinquish the emolument of other employments, and to enter into the service of the United States, who engaged to retain them during their lives, if they were guilty of no misconduct. They have behaved themselves well, unexceptionably well, when they find the government rescinding the contract made with them, refusing the stipulated price of their labour, dismissing them from service, and in order to cover the scandalous breach of faith, stigmatizing them with names which may render them odious to their countrymen. Is there a gentleman on the floor of this house, who would not revolt at such conduct in private life? Is there one who would feel himself justified, after employing a person for a certain time, and agreeing to pay a certain compensation, to dismiss the party from the service upon any caprice which altered his views, deny him the stipulated compensation, and to abuse him with opprobrious names, for expecting the benefit of the engagement?

A bold attempt was made by one of the gentlemen from Virginia,

(Mr. Giles) to force to his aid the Statutes of 13th Wm. 3d. I call it a bold attempt, because the gentleman was obliged to rely upon his own assertion to support the ground of his argument. He stated that the clause in the constitution was borrowed from a similar provision in the Statute. I know nothing about the fact, but I will allow the gentleman its full benefit. In England at an earlier period, the judges held their commissons during the good pleasure of the monarch. The parliament desired, and the king consented, that the royal prerogative should be restrained. That the offices of the judges should not depend on the will of the crown alone, but upon the joint pleasure of the crown and of parliament. The king consented to part with a portion of his prerogative by relinquishing his power to remove the judges without the advice of his parliament. *But by an express clause in this statute, he* retained the authority to remove them with the advice of his parliament. Suppose the clause had been omitted, which reserved the right to remove upon the address of the two houses of parliament, and the Statute had been worded in the unqualified language of our constitution, that the judges should hold their offices during good behavior, would not the prerogative of removal have been abolished altogether? I will not say that the honorable member has been peculiarly unfortunate in the employment of this argument, because, sir, it appears to me, that most to which he has had recourse, when justly considered, have operated against the cause they were designed to support.

The gentleman tells us that the constitutional provision on this subject was taken from the statute of William.—Will he answer me this plain question? Why do we find omitted in the constitution, that part of the statutory provision, which allowed the judges to be removed upon the address of the two branches of the legislature? Does he suppose that the clause was not observed? Does he imagine that the provision was dropt through inadvertency? Will he impute so gross a neglect to an instrument every sentence and word, and comma, of which, he has told us was so maturely considered, and so warily settled. No, sir, it is impossible; and give me leave to say, that if this part of the constitution were taken from the statute (and the gentleman from Virginia must have better information on the subject than I have) that a stronger argument could not be adduced, to shew that it was the intention of those who framed the constitution, by omitting that clause in the statute which made the judges tenants of their offices at the will of parliament; to improve in this country the English plan of judicature, by rendering the judges independent of the legislature. And I shall have occasion in the course of my observations to shew, that the strongest reasons derived from the nature of our government, and which do not apply to the English form, required the improvement to be made.

Upon this point, sir, we may borrow a few additional rays of light from the constitutions of Pennsylvania, of Delaware, and of some other states. In those states it has been thought, that there migh be misconduct on the part of a judge, not amounting to an impeachable offence, for which he should be liable to be removed. Their constitutions there-

fore have varied from that of the United States, and rendered their judges liable to be removed upon the address of *two thirds* of each branch of the legislature. Does it not strike every mind, that it was the intention of those constitutions to have judges independent of a *majority* of each branch of the legislature; and I apprehend also that it may be fairly inferred, that it was understood in those states when their constitution was formed, that even two thirds of each branch of the legislature would not have the power to remove a judge whose tenure of office was during good behavior, unless the power was expressly given to them by the constitution. I cannot well conceive of any thing more absurd in an instrument designed to last for centuries and to bind the furious passions of party, than to fortify one pass to judicial independence, and to leave another totally unguarded against the violence of legislative power.

It has been urged by the gentleman from Virginia, that our admission that congress has a power to modify the office of judge, leads to the conclusion, that they have the power to abolish the office. Because, by paring away their powers they may at length reduce them to a shadow, and leave them as humble and as contemptible as a court of piepoudre. The office of a judge consists of judicial powers which he is appointed to execute. Every law which is passed increases or diminishes those powers, and so far modifies the office: nay it is competent for the legislature to prescribe additional duties or to dispense with unnecessary services, which are connected with the office of the judge. But this power has its bounds. You may modify the office to any extent which does not effect the independence of the judge. The judge is to hold the office during good behavior; now modify as you please, so that you not infringe this constitutional provision.

Do you ask me to draw a line and say, thus far you can go and no farther. I admit no line can be drawn. It is an affair of sound and *bona fide* discretion. Because a discretion on the subject is given to the legislature, to argue upon the abuse of that discretion is adopting a principle subversive of all legitimate power.

The constitution is predicated upon the existence of a certain degree of integrity in man. It has trusted powers liable to enormous abuse, if all political honesty be discarded. The legislature is not limited in the amount of the taxes which they have a right to impose nor as to the objects to which they are to be applied. Does this power give us the property of the country, because by taxes we might draw it into the public coffers, and then cut up the treasury and divide the spoils? Is there any power in respect to which a precise line can be drawn, between the discreet exercise and the abuse of it.

I can only say therefore on this subject, that every man is acquitted to his own conscience who *bona fide* does not intend, and who sincerely does not believe, that by the law which he is about to pass, he interferes with the judges holding their offices during good behaviour.

I am now brought, Mr. Chairman, to take notice of some remarks which fell from the gentleman from Virginia, which do not belong to the

subject before us; but are of sufficient importance to deserve particular attention. He called our attention in a very impressive manner to the state of parties in this house at the time when the act of the last session passed. He describes us in a state of blind paroxysm of party rage, incapable of discerning the nature or tendency of the measures we were pursuing. That a majority of the house were struggling to counteract the expression of the public will, in relation to the person who was to be the chief magistrate of the country.

I did suppose, sir, that this business was at an end, and I did imagine that as gentlemen had accomplished their object, they would have been satisfied. But as the subject is again renewed, we must be allowed allowed to justify our conduct. I know not what the gentleman calls an expression of the public will. There were two candidates for the office of President, who were presented to the House of Representatives with equal suffrages. The constitution gave us the right and made it our duty to elect that one of the two whom we thought preferable. A public man is to notice the public will as constitutionally expressed. The gentleman from Virginia and many others may have had their preference but that preference of the public will did not appear by its constitutional expression. Sir, I am not certain, that either of those candidates had a majority of the country in his favour. Excluding the state of South-Carolina, the country was equally divided. We know that parties in that state were nearly equally balanced, and the claims of both the candidates were supported by no other scrutiny into the public will, than our official return of votes. Those votes are very imperfect evidence of the true will of a majority of the nation. They resulted from political intrigue, and artificial arrangement.

When we look at the votes we must suppose, that every man in Virginia voted the same way. These votes are received as a correct expression of the public will. And yet we know that if the votes of that state were apportioned according to the several voices of the people, that at least seven out of twenty one, would have been opposed to the successfull candidates. It was the suppression of the will of one third of Virginia, which enables gentlemen now to say, that the present chief magistrate is the man of the people. I consider that as the public will, which is expressed by constitutional organs. To that will I bow and submit. The public will, thus manifested, gave to the House of Representatives, a choice of two men for President. Neither of them was the man whom I wished to make President, but my election was confined by the constitution to one of the two, and I gave my vote to the one who I thought was the greater and better man. That vote I repeated, and in that vote I should have persisted, had I not been driven from it, by imperious necessity. The prospect ceased of the vote being effectual, and the alternative only remained of taking one man for President or having no President at all. I choose, as I then thought, the lesser evil.

From the scene in this house, the gentleman carried us to one in the senate. I should blush, sir, for the honor of the country, could I suppose that the law designed to be repealed, owed its support in that body to the motives which have been indicated. The charge designed to be conveyed, not only deeply implicates the integrity of individuals of the

senate, but of the person who was then chief magistrate. The gentleman, going beyond all precedent, has mentioned the names of members of that body, to whom commissions issued for offices not created by the bill before them, but which that bill by the promotions it afforded was likely to render vacant. He has considered the scandal of the transaction, as aggravated by the issuing of commissions for offices not actually vacant, upon the bare presumption that they would become vacant, by the incumbents accepting commissions, for high offices which were issued in their favor. The gentleman has particularly dwelt upon the indecent appearance of the business from two commissions being held by different persons at the same time, for the same office.

I beg that it will be understood, that I mean to give no opinion as to the regularity of granting a commission for a judicial office upon the probability of a vacancy, before it is actually vacant. But I shall be allowed to say that so much doubt attends the point, that an innocent mistake might be made on the subject. I believe, sir, it has been the practice to consider the acceptance of an office, as relating to the date of the commission. The officer is allowed his salary from that date, upon the principle that the commission is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuse, but where there was a suspicion of abuse, I presume the government would depart from it. Admitting the office to pass by the commission, and the acceptance to relate to its date, it then does not appear very incorrect in the case of a commission, for the office of a circuit judge, granted to a district judge, as the acceptance of the commission for the former office relates to the date of the commission, to consider the latter office as vacant at the same time. The offices are incompatible. You cannot suppose the same person in both offices at the same time.—From the moment, therefore, that you consider the office of circuit judge filled by a person who holds the commission of district judge, you must consider the office of district judge as vacated. The grant is contingent. If the contingency happen, the office vests from the date of the commission, if the contingency does not happen the grant is void. If this reasoning be sound, it was not irregular in the late administration, after granting a commission to a district judge, for the place of a circuit judge, to make a grant of the office of the district judge, upon the contingency of his accepting the office of circuit judge. I now return, sir, to that point of the charge, which was personal in its nature, and of infinitely the most serious import. It is a charge as to which, we can only ask, *is it true?* If it be true, it cannot be excused, it cannot be palliated, it is vile profligate corruption which every honest mind will execrate. But, sir, we are not to condemn, till we have evidence of the fact. If the offence be heinous, the proof ought to be plenary. I will consider the evidence of the fact, upon which the honorable member has relied, and I will shew him by the application of it to a stronger case, that it is of a nature to prove nothing.

Let me first state the principal case. Two gentlemen of the senate, Mr. Read of South-Carolina, and Mr. Green of Rhode-Island, who voted in favor of the law last session, each received an appointment to the place of district judge, which was designed to be vacated by the promotion of

the district judge to the office of circuit judge. The gentleman conveyed to us a distinct impression of his opinion, that there was an understanding between these gentlemen and the president, and that the offices were the promised price of their votes.

I presume, sir, the gentleman will have more charity, in the case which I am about to mention, and he will for once admit that public men ought not to be condemned, upon loose conclusions drawn from equivocal presumptions.

The case, sir, to which I refer, carries me once more to the scene of the presidential election. I should not have introduced it into this debate, had it not been called up by the honorable member from Virginia. In that scene I had my part, it was a part not barren of incident, and which has left an impression, which cannot easily depart from my recollection. I know who were rendered important characters, either from the possession of personal means, or from the accident of political situation. And now, sir, let me ask the honorable member, what his reflections and belief will be, when he observes that every man, on whose vote the event of the election hung, has since been distinguished by presidential favor. I fear, sir, I shall violate the decorum of parliamentary proceeding, in the mentioning of names, but I hope the example which has been set me will be admitted as an excuse. Mr. Charles Pinckney of South-Carolina was not a member of the house, but he was one of the most active, efficient and successful promoters of the election of the present chief magistrate. It was well ascertained that the votes of South-Carolina were to turn the equal balance of the scales. The zeal and industry of Mr. Pinckney had no bounds. The doubtful politics of South-Carolina were decided, and her votes cast into the scale of Mr. Jefferson. Mr. Pinckney has since been appointed minister plenipotentiary to the court of Madrid. An appointment as high and honorable, as any within the gift of the executive. I will not deny that this preferment is the reward of talents and services, although, sir, I have never yet heard of the talents or the services of Mr. C. Pinckney. In the house of representatives I know what was the value of the vote of Mr. Claiborne of Tennessee. The vote of a state was in his hands. Mr. Claiborne has since been raised to the high dignity of governor of the Mississippi Territory. I know how great & how greatly felt, was the importance of the vote of Mr. Linn of N. Jersey. The delegation of the state consists of five members. Two of the delegation were decidedly for Mr. Jefferson; two were decidedly for Mr. Burr. Mr. Linn was considered as inclining to one side, but still doubtful. Both parties looked up to him for the vote of New-Jersey. He gave it to Mr. Jefferson, and Mr. Linn has since had the profitable office of supervisor of his district confered upon him. Mr. Lyon of Vermont, was in this instance an important man. He neutralized the vote of Vermont. His absence alone would have given the vote of a state to Mr. Burr. It was too much to give an office to Mr. Lyon; his character was too low. But Mr. Lyon's son has been handsomely provided for in one of the executive offices. I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston of New-York. I knew well, full well I knew the case.

quence of this gentleman. His means were not limited to his own vote; nay, I always considered more than the vote of New-York within his power. Mr. Livingston has been made the attorney for the district of New-York—the road of preferment has been opened to him, and his brother has been raised to the distinguished place of minister plenipotentiary to the French Republic. This catalogue might be swelled to a much greater magnitude; but I fear, Mr. Chairman, were I to proceed further, it might be supposed, that I myself harboured the uncharitable suspicions of the integrity of the chief magistrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my design alone to banish from the mind of the honorable member from Virginia. It would be doing me great injustice to suppose, that I have the smallest desire, or have had the remotest intention to tarnish the fame of the present chief magistrate; or of any of the honorable gentlemen who have been the objects of his favor, by the statement which I have made; my motive is of an opposite nature. The late president appointed gentlemen to office, to whom he owed no personal obligations, but who only supported what has been considered as a favorite measure.—This has been assumed as a sufficient ground, not only of suspicion, but of condemnation. The present executive, leaving scarcely an exception, has appointed to office, or has by accident, indirectly gratified every man, who had any distinguished means in the competition, for the presidential office, of deciding the election in his favor. Yet, sir, all this furnishes too feeble a presumption to warrant me to express a suspicion of the integrity of a great officer, or of the probity of honorable men, in the discharge of the high functions which they had derived from the confidence of their country. I am sure, sir, in this case, the honorable member from Virginia is as exempt from this suspicion as myself. And I shall have accomplished my whole object, if I induce that honorable member, and other members of the committee, who entertain his suspicions as to the conduct of the late executive, to review the ground of those suspicions, and to consider that in a case furnishing much stronger ground for the presumption of criminality, they have an unshaken belief, an unbroken confidence in the purity and fairness of the executive conduct.

I return again to the subject before the committee, from the unpleasant digression to which I was forced to submit, in order to repel insinuations which were calculated to have the worst effect, as well abroad as within the walls of this house. I shall now cursorily advert to some arguments of minor importance, which are supposed to have some weight by gentlemen on the other side. It is said, that if the courts are sanctuaries and the judges cannot be removed by law, it would be in the power of a party to create a host of them to live as pensioners on the country. This argument is predicated upon an extreme abuse of power, which can never fairly be urged to restrain the legitimate exercise of it; as well might it be urged, that a subsequent congress had a right to reduce the salary of a judge, or of the President, fixed by a former congress, because if the right did not exist, one congress might confer a salary of 500,000 or 1,000,000 dollars to the impoverishment of the

country. It will be time enough to decide upon those extreme cases when they occur. We are told, that the doctrine, we contend for, enables one legislature to derogate from the power of another. That it attributes to a former a power which denies to a subsequent legislature. This is not correct. We admit that this congress possesses all the power possessed by the last congress. That congress had a power to establish courts, so has the present. That congress had not, nor did it claim the power to abolish the office of a judge while it was filled.—Though they thought five judges under the new system sufficient to constitute a supreme court, they did not attempt to touch the office of either of the six judges. Though they considered it more convenient to have circuit judges in Kentucky and Tennessee, than district judges, they did not lay their hads upon the offices of the district judges. We therefore deny no power to this congress which was not denied to the last. An honorable member from Virginia, (Mr. Thompson) seriously expressed his alarm, lest the principles we contended for should introduce into the country a privileged order of men. The idea of the gentleman supposes, that every office not at will establishes a privileged order. The judges have their offices for one term; the president, the senators and the members of this house for different terms. While these terms endure, there is a privilege to hold the places, and no power exists to remove. If this be what the gentleman means by a privileged order, and he agrees, that the president, the senators and the members of this house belong to privileged orders, I shall give myself no trouble to deny, that the judges fall under the same description; and I believe, that the gentleman will find it difficult to shew, that in any other manner they are privileged. I did not suppose, that this argument was so much addressed to the understanding of gentlemen upon this floor, as to the prejudices and passions of people out of doors.

It was urged with some impression by the honorable member from Virginia, to whom I last referred, that the position that the office of a judge might be taken from him by law, was not a new doctrine. That it was established by the very act now designed to be repealed, which was described in glowing language to have inflicted a gaping wound on the constitution, and to have stained with its blood the pages of our Statute book. It shall be my task, sir, to close this gaping wound, and to wash from the pages of our Statute-book, the blood with which they were stained. It will be an easy task to shew to you the constitution without a wound, and the Statute book without a stain.

It is, sir, the 27th sec. of the bill of the last session, which the honorable member considers as having inflicted the ghastly wound on the constitution, of which he has so feelingly spoken. That section abolishes the ancient circuit courts. But, sir, have we contended, or has the gentleman, shewn, that the constitution prohibits the abolition of a court when you do not materially affect or in any degree impair the independence of a judge. A court is nothing more than a place where a judge is directed to discharge certain duties. There is no doubt, you may erect a new court and direct it to be holden by a judge of the supreme or of the district courts. And if it should afterwards be your

pleasure to abolish that court, it cannot be said, that you destroy the offices of the judges by whom it was appointed that the court should be holden.

Thus it was directed by the original judicial law, that a circuit court should be holden at York town, in the district of Pennsylvania. This court was afterwards abolished, but it was never imagined, that the office of any judge was affected. Let me suppose that a state is divided into two districts, and district courts established in each, but that one judge is appointed by law to discharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is abolished. In this case will it be said, that the office of the judge is destroyed, or his independence affected? The error, into which gentlemen have fallen on this subject, has arisen from their taking for granted, what they have not attempted to prove, and what cannot be supported. That the office of a judge and any court in which he officiates are the same thing It is most clear, that a judge may be authorized and directed to perform duties in several courts, & that the discharging him from the performance of duty in one of those courts cannot be deemed an infringement of his office. The case of the late circuit courts as plainly illustrates the argument, and as conclusively demonstrates its correctness, as any case which can be put: There were not nominally any judges of the circuit court. The court was directed to be holden by the judges of the supreme and of the district courts. The judges of these two courts were associated and directed to perform certain duties, when associated and in the performance of those duties, they were denominated the circuit court. This court is abolished; the only consequence is that the judges of the supreme and district courts are discharged from the performance of the joint duties which where previously imposed upon them. But is the office of one judge of the supreme or of the district courts infringed? Can any judge say, in consequence of the abolition of the circuit courts, I no longer hold my office during good behavior? On this point it was further alledged by the same honorable member, that the law of the last session inflicted another wound on the constitution, by abolishing the district court of Kentucky and Tennessee. The gentleman was here deceived by the same fallacy which misled him on the subject of the circuit courts. If he will give himself the trouble of carefully reviewing the provisions of the law, he will discern the sedulous attention of the legislature to avoid the infringement of the offices of those judges. I believe the gentleman went so far as to charge us with appointing by law those judges to new offices.

The law referred to, establishes a circuit, comprehending Kentucky, Tennessee and the district of Ohio. The duties of the court of this circuit are directed to be performed by a circuit judge and the two district judges of Kentucky and Tennessee. Surely it is competent for the legislature to create a court, and to direct that it shall be holden by any of the existing judges. If the legislature had done with respect to all the district judges, what they have done with respect to those of Kentucky and Tennessee, I am quite certain, that the present objection would have appeared entirely groundless. Had they directed, that all the cir-

cuit courts should be held by the respective district judges within the circuits, gentlemen would have clearly seen, that this was only an imposition of a new duty and not an appointment to a new office.

It will be recollected, that under the old establishment, the district judges of Kentucky and Tennessee were invested generally with the powers of the circuit judges. The ancient powers of those judges are scarcely varied by the late law, and the amount of the change is, that they are directed to exercise those powers in a court formerly called a district, but now a circuit court, and at other places than those to which they were formerly confined. But the district judge nominally remains, his office both nominally and substantially exists, & he holds it now as he did before, during good behaviour. I will refer gentlemen to different provisions in the late law, which will shew beyond denial, that the legislature carefully and pointedly avoided the act of abolishing the *offices* of those judges.

The 7th sect. of the law provides that the court of the 6th circuit shall be composed of a circuit judge "*and the judges of the district courts* of Kentucky and Tennessee." It was afterwards declared in the same section, "that there shall be appointed in the 6th circuit, a judge of the United States to be called a circuit judge, who, together with *the district judge of Tennessee and Kentucky* shall hold the circuit courts hereby directed to be holden within the same circuit" And finally, in the same section it is provided, "*that whenever the office of district judge in the districts of Kentucky and Tennessee respectively hall become vacant* such vacancies shall respectively be supplied by the appointment of two additional judges in the said circuit, who, together with circuit judge first aforesaid, shall compose the circuit court of the said circuit." When the express language of the law affirms the existence of the office and of the officer, by providing for the contingency of the officer ceasing to fill the office, with what face can gentlemen contend that the *office* is abolished? They who are not satisfied upon this point, I despair of convincing upon any other.

Upon the main question, whether the judges hold their offices at the will of the legislature, an argument of great weight and according to my humble judgment, of irresistible force, still remains.

The legislatve power of the government is not absolute but limited. If it be doubtful whether the legislature can do what the constitution does not explicitly authorize; yet there can be no question, that they cannot do what the constitution expressly prohibits. To maintain, therefore, the constitution the judges are a check upon the legislature. This doctrine I know is denied, and it is therefore incumbent upon me to show that it is sound.

It was once thought by gentlemen who now deny the principle, that the safety of the citizen and of the states, rested upon the power, of the judges to declare an unconstitutional law void. How vain is a paper restriction if it confers neither power nor right. Of what importance is it to say, Congress are prohibited from doing certain acts, if no legitimate authority exists in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the consequences which would follow from establishing the principle, that Congress have the exclusive right to decide upon their own powers? This principle admitted, does any

constitution remain? Does not the power of the legislature become absolute and omnipotent? Can you talk to them of transgressing their powers when no one has a right to judge of those powers but themselves? They do what is not authorized, they do what is inhibited, nay at every step they trample the constitution under foot; yet their acts are lawful and binding, and it is treason to resist them. How ill, sir, do the doctrines and professions of these gentlemen agree. They tell us they are friendly to the existence of the states; that they are the friends of federative, but the enemies of a consolidated general government, and yet, sir, to accomplish a paltry object, they are willing to settle a principle which, beyond all doubt, would eventually plant a consolidated government, with unlimited power upon the ruins of the state governments.

Nothing can be more absurd than to contend that there is a practical restraint upon a political body who are answerable to none but themselves for the violation of the restraint, and who can derive from the very act of violation, undeniable justification of their conduct.

If, Mr. Chairman, you mean to have a constitution, you must discover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the legislature which contravene the instrument.

Does the power reside in the states? Has the legislature of a state a right to declare an act of congress void? This would be erring upon the opposite extreme. It would be placing the general government at the feet of the state governments. It would be allowing one member of the union to controul all the rest. It would inevitably lead to civil dissention and a dissolution of the general government. Will it be pretended that the state courts have the exclusive right of deciding upon the validity of our laws?

I admit they have the right to declare an act of congress void. But this right they enjoy in practice, and it ever essentially must exist subject to the revision and controul of the courts of the United States. If the state courts definitively possess the right of declaring the invalidity of the laws of this government, it would bring us in subjection to the states. The judges of those courts being bound by the laws of the state, if a state declared an act of congress unconstitutional, the law of the state would oblige its courts to determine the law invalid. This principle would also destroy the uniformity of obligation upon all the states which should attend every law of this government. If a law were declared void in one state, it would exempt the citizens of that state from its operation, whilst obedience was yielded to it in the other states. I go farther, and say, if the states or state courts had a final power of annulling the acts of this government, its miserable and precarious existence would not be worth the trouble of a moment to preserve.

It would endure but a short time, as a subject of derision, and wasting into an empty shadow would quickly vanish from our sight. Let me now ask if the power to decide upon the validity of our laws resides with the people. Gentlemen cannot deny this right to the sovereign people. I admit they possess it. But if at the same time it does not belong to the courts of the U. States, where does it lead the people? It leads them to the gallows. Let us suppose that congress, forgetful of the

mits of their authority, pass an unconstitutional law. They lay a direct tax upon one state & impose none upon the others. The people of the state taxed, contest the validity of the law. They forcibly resist its execution. They are brought by the executive authority before the courts upon charges of treason. The law is unconstitutional, the people have done right, but the court are bound by the law and obliged to pronounce upon them the sentence which it inflicts. Deny to the courts of the United States, the power of judging upon the constitutionality of our laws, and it is vain to talk of its existing elsewhere. The infractors of the laws are brought before these courts, & if the courts are implicitly bound, the invalidity of the laws can be no defence. There is, however, Mr. Chairman, still a stronger ground of argument upon this subject. I shall select one or two cases to illustrate it. Congress are prohibited from passing a bill of attainder ; it is also declared in the constitution that ' no attainder of treason shall work corruption of blood or forfeitnre, except during the life of the party attainted.' Let us suppose that congress pass a bill of attainder, or they enact that any one attainted of treason shall forfeit to the use of the United States all the estate which he held in any lands or tenements.

The party attainted is seized and brought before a federal court, and an award of execution prayed against him. He opens the constitution and points to this line ' no bill of attainder or ex-post facto law shall be passed.' The attorney for the United States reads the bill of attainder.

The court are bound to decide, but they have only the alternative of pronouncing *the law or the constitution invalid.* It is left to them only to say that the law vacates the constitution, or the constitution avoids the law. So in the other case stated, the heir after the death of his ancestor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law by which it is confiscated is shewn. The constitution gave no power to pass such a law. On the contrary it expressly denied it to government. The title of the heir is rested on the constitution, the title of the government on the law. The effect of one destroys the effect of the other ; the court must determine which is effectual.

There are many other cases, Mr. Chairman, of a similar nature to which I might allude. There is the case of the privilege of Habeas Corpus which cannot be suspended but in times of rebellion or invasion Suppose a law prohibiting the issuing of the writ at a moment of profound peace. If in such case the writ were demanded of a court, could they say, it is true the legislature were restrained from passing the law, suspending the privilege of this writ, at such a time as that which now exists, but their mighty power has broken the bonds of the constitution, and fettered the authority of the court. I am not, Sir, disposed to vaunt, but standing on this ground I throw the gauntlet to any champion upon the other side. I call upon them to maintain, that in a collision between a law and the constitution, the judges are bound to support the law, and annul the constitution. Can the gentlemen relieve themselves from this dilemma ? Will they say, tho' a judge has no power to pronounce a law void, he has a power to declare the constitution invalid.

The doctrine for which I am contending is not only clearly inferable from the plain language of the constitution, but by law has been expressly declared and established in practice since the existence of the government.

The 2d section of the 3d article of the constitution expressly extends the judicial power to all cases arising under the constitution, the laws, &c. The provision in the 2d clause of the 6th article leaves nothing to doubt. "This constitution and *the laws of the United States which shall be made in pursuance thereof, &c.* shall be the supreme law of the land." The constitution is absolutely the supreme law. Not so of the acts of the legislature.—Such only are the law of the land as are made *in pursuance of the constitution.*

I beg the indulgence of the committee one moment, while I read the following provision from the 25th sect. of the judicial act of the year 1789: "A final judgment or decree in any suit in the highest court of law or equity of a state in which a decision in the suit could be had, *where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States,* and the *decision is against their validity, &c.* may be re-examined and reversed or *affirmed* in the supreme court of the United States upon a writ of error."—Thus, as early as the year 1789, among the first acts of the government, the legislature explicitly recognized the right of a state court to declare a treaty, a statute, and an authority exercised under the United States void, subject to the revision of the supreme court of the United States; and it has expressly given the final power to the supreme court to affirm a judgment which is against the validity either of a treaty, statute or an authority of the government.

I humbly trust, Mr. Chairman, that I have given abundant proofs from the nature of our government, from the language of the constitution, and from legislative acknowledgement, that the judges of our courts have the power to judge and determine upon the constitutionality of our law.

Let me now suppose that in our frame of government the judges are a check upon the legislature; that the constitution is deposited in their keeping. Will you say afterwards that their existence depends upon the legislature? That the body whom they are to check has the power to destroy them? Will you say that the constitution may be taken out of their hands, by a power the most to be distrusted, because the only power which could violate it with impunity? Can any thing be more absurd than to admit, that the judges are a check upon the legislature, and yet to contend that they exist at the will of the legislature? A check must necessarily imply a power commensurate to its end. The political body designed to check another must be independent of it, otherwise there can be no check. What check can there be when the power designed to be checked can annihilate the body which is to restrain it?

I go farther, Mr. Chairman, and take a stronger ground. I say in the nature of things the dependence of the judges upon the legislature, and their right to declare the acts of the legislature void, are repugnant and cannot exist together. The doctrine, sir, supposes two rights—first the right of the legislature to destroy the office of the judge, and the right of the judge to vacate the act of the legislature. You have a right

to abolish by a law, the offices of the judges of the circuit courts.—They have a right to declare your law void. It unavoidable follows in the exercise of these rights, either that you destroy their rights, or that they destroy yours. This doctrine is not an harmless absurdity, it is a most dangerous heresy. It is a doctrine which cannot be practised without producing not discord only, but bloodshed. If you pass the bill upon your table the judges have a constitutional right to declare it void. I hope hey will have courage to exercise that right; and it, sir, I am called upon to take my side, standing acquitted in my conscience and before my God, of all motives but the support of the constitution of my country, I shall not tremble at the consequences.

The constitution may have its enemies, but I know that it has also its friends. I beg gentlemen to pause before they take this rash step. There are many, very many who believe, if you strike this blow, you inflict a mortal wound on the constitution. There are many now willing to spill their blood to defend that constitution. Are gentlemen disposed to risk the consequences? Sir, I mean no threats—I have no expectation of appalling the stout hearts of my adversaries; but if gentlemen are regardless of themselves, let them consider their wives and children, their neighbours and their friends. Will they risk civil dissention; will they hazard the welfare, will they jeopardize the peace of the country, to save a paltry sum of money, less than thirty thousand dollars.

Mr. Chairman, I am confident that the friends of this measure are not apprised of the nature of its operation, nor sensible of the mischievous consequences which are likely to attend it. Sir, the morals of your people, the peace of the country, the stability of the government, rest upon the maintenance of the independence of the judiciary. It is not of half the importance in England, that the judges should be independent of the crown, as it is with us, that they should be independent of the legislature. Am I asked, would you render the judges superior to the legislature? I answer, no, but co-ordinate. Would you render them independent of the legislature? I answer, yes, independent of every power on earth, while they behave themselves well. The essential interests, the permanent welfare of society require this independence. Not, sir, on account of the judge; that is a small consideration, but on account of those between whom he is to decide. You calculate on the weaknesses of human nature, and you suffer the judge to be dependant on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependant judge cannot be impartial. Independence is therefore essential to the purity of your judicial tribunals.

Let it be remembered, that no power is so sensibly felt by society, as that of the judiciary. The life and property of every man, is liable to be in the hands of the judges. Is it not our great interest, to place our judges upon such high ground, that no fear can intimidate, no hope can seduce them? The present measures humbles them in the dust, it prostrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate, it is this consequence which I deeply deplore. What does reason, what does argument avail, when party spirit presides? Subject your bench to the influence of this spirit, and justice bids a final adieu to your tribunals. We are

asked, sir, if the judges are to be independent of the people? The question presents a false and delusive view. We are all the people. We are, and as long as we enjoy our freedom, we shall be divided into parties. The true question is, shall the judiciary be permanent, or fluctuate with the tide of public opinion? I beg, I implore gentlemen, to consider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the spirit of party. But let their existence depend upon the support of the power of a certain set of men, and they cannot be impartial. Justice will be trodden under foot. Your courts will lose all public confidence and respect.

The judges will be supported by their partizans, who in their turn will expect impunity for the wrongs and violence they commit. The spirit of party will be inflamed to madness; and the moment is not far off, when this fair country is to be dessolated by civil war.

Do not say, that you render the judges dependent only on the people.—you make them dependent on your President. This is his measure. The same tide of public opinion which changes a President, will change the majorities in the branches of the legislature. The legislature will be the instrument of his ambition, and he will have the courts as the instruments of his vengeance. He uses the legislature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the government will be concentrated in the hands of one man, who will dare to act with more boldness, because he will be sheltered from responsibility. The independence of the judiciary was the felicity of our constitution. It was this principle which was to curb the fury of party upon sudden changes. The first moments of power, gained by a struggle, are the most vindictive and intemperate. Raised above the storm, it was the judges who were to control the fiery zeal, and to quell the fierce passions of a victorius faction.

We are standing on the brink of that revolutionary torrent, which deluged in blood one of the fairest countries of Europe.

France had her national assembly, more numerous and equally popular with our own. She had her tribunals of justice, and her juries. But the legislature and her courts were but the instruments of her destruction. Acts of prescription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party, and you break down the mounds which defend you from this torrent. I am done. I should have thanked my God for greater power to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck, we may bid a final adieu to the constitution.

The following corrections were not received until the first half sheet had been printed.

ERRATA—*In page* 1. *line* 3. *After the words* "before us." *I had expected he would have adopted a different line of conduct.*

2. *The two last paragraphs to be united,*
4. 35*th line, for* '*gratification*' *read* gratifications.
5. 4*th line from the bottom, for* '*or*' *read* nor.
8. 15*th line, for* '*individual*' *read* judicial.